

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 232 36.

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GEORGE F. UNDERHILL, PLAINTIFF IN ERROR.

vs.

JOSE MANUEL HERNANDEZ.

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ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT.

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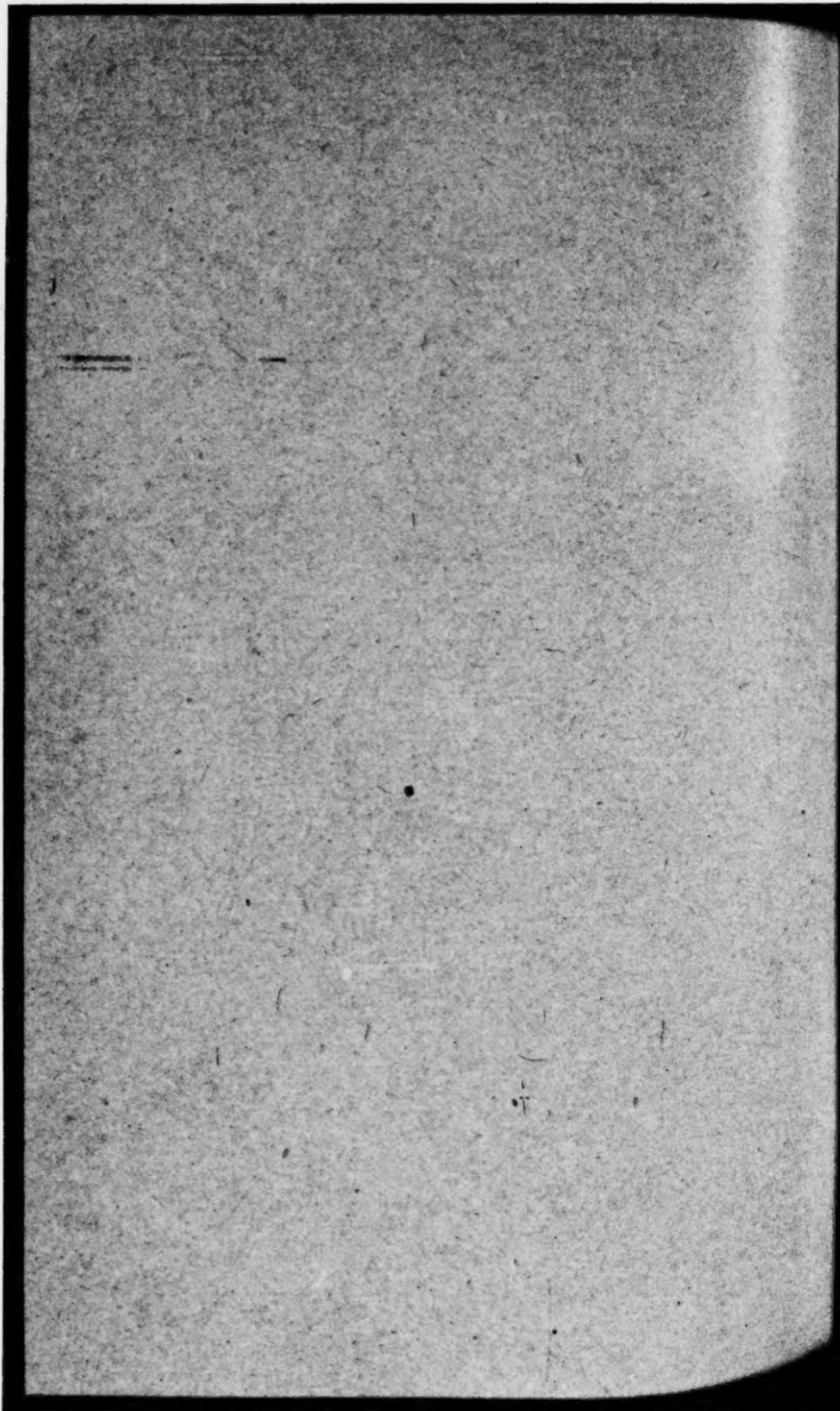
PETITION FILED MARCH 2, 1895.  
CERTIORARI AND RETURN FILED MARCH 27, 1895.

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(15,810.)



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(15,810.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 238

GEORGE F. UNDERHILL, PLAINTIFF IN ERROR,

vs.

JOSE MANUEL HERNANDEZ.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

GEORGE F. UNDERHILL, Plaintiff in Error, }  
vs.  
JOSE MANUEL HERNANDEZ, Defendant in Error. }

*Transcript of Record.*

Error to the circuit court of the United States for the eastern district of New York.

[Stamped :] United States circuit court of appeals, second circuit.  
Filed Oct. 5, 1894. John A. Shields, clerk.

1 Circuit Court of the United States, Eastern District of New York.

GEORGE F. UNDERHILL }  
vs.  
JOSE MANUEL HERNANDEZ. } Rule.

This cause having originally been commenced in the supreme court of the State of New York, for the county of Kings, and the same having been removed thence into this court on the application of the above-named defendant, and the said defendant having this day duly filed and entered in this court a certified copy of the record in the said supreme court, it is now, on motion of Coudert Brothers, attorneys for the said defendant,

Ordered, that this action do proceed in this court in the same manner as if it had been brought therein by original process, and that the supreme court of the State of New York proceed no further therein, and that the appearance of said defendant by Coudert Brothers, his attorneys, be and the same hereby is noted.

Dated, Brooklyn, December 28, 1893.

2 Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff, }  
against  
JOSE MANUEL HERNANDEZ, Defendant. } Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated November 2, 1893.

LOGAN, CLARK & DEMOND,  
*Plaintiff's Attorneys.*

Office and P. O. address, No. 58 William street, New York city.

Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff,      }  
  against

JOSE MANUEL HERNANDEZ, Defendant.      }

The plaintiff, for his cause of action against the defendant, alleges as follows:

I. That on the 13th day of August, 1892, at the city of Bolivar, in the Republic of Venezuela, South America, the defendant falsely, maliciously, without right or color of right, and wholly without reasonable cause or any provocation whatsoever, imprisoned the plaintiff in a certain house, namely, in the house which the plaintiff had theretofore occupied ; and kept him so imprisoned up to October 18, 1892.

II. That frequently during said time the plaintiff demanded of the defendant that he, the plaintiff, be allowed to leave the city of Bolivar, but that the defendant refused.

III. That during said time the defendant also assaulted and beat the plaintiff by putting armed persons around the said house, by placing cannon around it, by depriving the plaintiff of wood and food and other necessities of life, and by various other actions and words threatened the life and bodily security of the plaintiff.

IV. That, in consequence of such false imprisonment and assaults and threats, the plaintiff was prevented from attending to his necessary affairs and business during that time, and was made 4 sick ; and that during said time for about three weeks he lay seriously ill, part of the time in imminent danger of dying therefrom.

V. That the plaintiff has been damaged thereby in the sum of twenty-five thousand dollars (\$25,000), reckoning solely the injuries to his person, and exclusive of the loss of property which the plaintiff was compelled to surrender under duress.

Wherefore the plaintiff demands judgment for twenty-five thousand dollars (\$25,000), with costs of this action.

LOGAN, CLARK & DEMOND,  
*Plaintiff's Attorneys, 58 William St., New York City.*

CITY AND COUNTY OF NEW YORK, ss:

George F. Underhill, being duly sworn, says that he is the plaintiff herein, and that he has read the foregoing complaint ; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.      GEORGE F. UNDERHILL.

Sworn to before me this 25th day of November, 1893.

M. E. HARBY,  
*Commissioner of Deeds, New York County.*

(Endorsed :) Supreme court, Kings county. George F. Underhill against Jose Manuel Hernandez. Complaint. Logan, Clark & Demond, att'y's for plaintiff, 58 William street, New York.

5 STATE OF NEW YORK, }  
*County of Kings,* }  
 ss:

I, John Cottier, clerk of the county of Kings, and clerk of the supreme court of the State of New York, in and for said county [L. S.] (said court being a court of record), do hereby certify, that

I have compared the annexed with the original summons and complaint, filed in my office December 21, 1893, and that the same is a true transcript thereof, and of the whole of such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and court this 22d day of December, 1893.

JOHN COTTIER, Clerk.

6 Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff, }  
*against* } Notice of Appearance.  
 JOSE MANUEL HERNANDEZ, Defendant. }

SIRS: Please take notice, that the defendant appears in this action, and that we have been retained as attorneys for him therein, and demand that a copy of the complaint, and all papers in this action, be served on us at our office, numbers 68 and 70 William street, New York city.

N. Y., Nov. 22d, 1893.

Yours, &c.,

COUDERT BROTHERS,  
*Attorneys for Defendant.*

Office No. and Post-office address, 68 and 70 William St., New York city, New York.

To Logan, Clark & Demond, plaintiff's attorneys, 58 William St., New York city.

(Endorsed:) Supreme court, Kings county. George F. Underhill ag'st Jose Manuel Hernandez. Notice of appearance of defendant. Coudert Brothers, attorneys for defendant. Due and timely service of a notice of which the within is a copy, admitted this 22d day of Nov., 1893. Plaintiff's attorney.

7 Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff, }  
*against* } Order to Arrest and Hold  
 JOSE MANUEL HERNANDEZ, Defendant. } to Bail.

To the sheriff of any county of the State of New York:

It having been made to appear to me by the affidavit of George F. Underhill and Jennie L. Underhill, that a sufficient cause of action exists against the defendant, Jose Manuel Hernandez, and that the case is one of those mentioned in article 1st, chapter 7, title 1, of the New York Code of Civil Procedure, and that the ground of arrest

is the nature of the action, being for false imprisonment, assault and battery and other personal injuries.

You are required forthwith to arrest Jose Manuel Hernandez, the defendant in this action, if he is found within your county, and to hold him to bail in the sum of ten thousand dollars and to return this order, with your proceedings thereunder, as prescribed by law.

Dated Brooklyn, November 2d, 1893.

EDGAR M. CULLEN, J. S. C.

LOGAN, CLARK & DEMOND,

*Plaintiff's Attorney*, 58 William St., N. Y. City.

8

Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff,      }  
  *against*      }  
JOSE MANUEL HERNANDEZ, Defendant.      }

CITY AND COUNTY OF NEW YORK, ss:

George F. Underhill, being duly sworn, says that he is the plaintiff herein. That he is a citizen of the United States of America, and resides at 260 Forty-fifth street in the city of Brooklyn, State of New York.

That the defendant is not a citizen of the United States and is not a resident of the State of New York, or of the United States of America, but is a citizen of the Republic of Venezuela, and is now temporarily in the city of New York, intending, as deponent is informed and believes, to depart for Venezuela within a day or two.

That in the month of August, 1892, and for several years prior thereto, the plaintiff resided with his family at Ciudad Bolivar, in the Republic of Venezuela, South America; that he, the plaintiff, was engaged in business there, namely, in the management of the water works which supplied water to that city; that such business was entirely his own; that deponent had built it up entirely by his own efforts, and erected the plant and furnished the money therefor; that this had been a very large undertaking and had taken him several years to accomplish and had cost at least \$75,000 United States money; that it was a successful business, was yielding a net income of over \$4,500 a year, and was worth at least \$50,000, United States money.

9      That during a few months prior to the month of August, 1892, the defendant had organized a revolutionary band of followers without any authority of any kind whatsoever, from the government, and was in open revolt and in armed conflict with all the constituted authorities of the city, the State or the Republic.

That on the 9th day of August, 1892, the defendant, with his band of followers, succeeded in defeating that portion of the government troops which were stationed near Ciudad Bolivar and which were under the command of General Santos Carrera; and on the 13th of August, 1892, the defendant with his followers entered Ciudad Bolivar and took possession of the city and assumed com-

mand and all governmental authority therein, arbitrarily, and without any right or color of right whatsoever from any constituted authority of the city, State or Republic.

That deponent was then in Ciudad Bolivar, living in his own house with his wife and servants. That on or about the said 13th day of August the defendant maliciously and without any provocation whatsoever, confined deponent in his said house, setting armed guards around it and subjecting deponent to all sorts of indignities and threats of violence.

That the defendant kept deponent so imprisoned in his house from the said 13th day of August, 1892, to about the 1st day of October, 1892, and did not allow him to go outside of his house, except on one occasion during the month of August, when he ordered the plaintiff to go to the steamer Socorro, which was then lying in the river, in order to make an examination of the same with regard to repairing it, and that on such occasion he was escorted to the said steamer and back by armed guards; and except on one other occasion, when he was also attended by an armed guard.

That during said period deponent frequently demanded of the defendant permission to leave the city and the country of Venezuela, but that the defendant refused to allow him to go out; that such demands were made to the defendant personally by friends of deponent, by one named Manuel Grillet, a native of that city 10 and a gentleman of the highest standing there, by Mr. Harold Jennings, an English subject who was in the employ of deponent at that time, and by deponent's wife, Jennie L. Underhill, and by others.

On one occasion, namely about the 14th day of September, 1892, deponent himself, at the risk of his life, went personally to the defendant and demanded permission to leave the city and the Republic and was refused, just as all the other demands of his friends had been refused.

That during said imprisonment threats against his life were frequently made, and, as deponent firmly believes, with the knowledge and connivance of the defendant; that the supplies of wood and other necessary things for the household were cut off; and that, during nearly all of said time, cannon were placed in front of the house, pointing towards the house.

That in consequence of said imprisonment, assault and deponent's anxiety about himself and his wife, deponent was taken sick and lay seriously ill in said house for about three weeks, and that during a portion of such time his life was seriously in danger.

That the defendant, through certain agents coming from the defendant, personally, as they declared to deponent, demanded of deponent that he sell to the defendant his aforesaid business, with all the plant and property connected therewith, and threatened if deponent should not consent to sell the same deponent would be indefinitely imprisoned; and moreover, that he should be imprisoned in the jail. That the price offered by the defendant for the said property and business was at first eight thousand pesos; that afterwards they offered 6,500 pesos, a sum equal to about \$5,000 in

money of the United States; that finally, under said duress, deponent was compelled to sign papers transferring the said business and property to one B. Tomassi & Co., for the sum of 6,500 pesos; and that upon the completion of such transfer the defendant liberated the deponent from his imprisonment and allowed him to leave Ciudad Bolivar.

That in consequence of the foregoing facts deponent has 11 lost his entire fortune, all that he had having been invested in the said business and water works; that he was obliged, in order to save his life, to leave that country, and thus sever permanently all his prior business connections and opportunities.

That deponent places his damages at the hands of the defendant, on account of the foregoing facts, at \$75,000; being \$50,000 for the loss of his business and property and \$25,000 for the personal injuries and indignities to which he was subjected.

That he has commenced suit against the defendant for the said damages, upon the said cause of action, and that the summons annexed hereto is a copy of the summons in such action.

GEORGE F. UNDERHILL.

Sworn to before me this 2nd day of November, 1893.

F. H. KNIGHT,  
*Notary Public, N. Y. Co.*

12

Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff, }  
against  
JOSE MANUEL HERNANDEZ, Defendant. }

CITY AND COUNTY OF NEW YORK, ss:

Jennie L. Underhill, being duly sworn, states that she is the wife of the plaintiff herein. That she has read the affidavit of the plaintiff, George F. Underhill, herein, verified the same day as this, and knows the contents thereof.

That she was personally present with her husband during all the time of his imprisonment, and in the same house with him, up to the second day of October, 1892, when she left Bolivar, and that she has personal knowledge of the facts relating to the said imprisonment and the indignities and threats heaped upon him, and the sickness of her husband in consequence thereof; and that all the facts relating thereto stated in the said affidavit are true.

That on one occasion, namely on the 27th day of September, 1892, deponent had a personal interview with the defendant, and demanded on behalf of her said husband that he be allowed to leave the country, but that the defendant refused.

JENNIE L. UNDERHILL.

Sworn to before me this 2nd day of November, 1893.

F. H. KNIGHT,  
*Notary Public, N. Y. Co.*

13 Supreme Court, Kings County.

GEORGE F. UNDERHILL, Plaintiff,  
*against*  
JOSE MANUEL HERNANDEZ, Defendant. }

CITY AND COUNTY OF NEW YORK, 88:

Salter S. Clark, being duly sworn, says that he is one of the attorneys for the plaintiff in this action. That no previous application has been made for an order of arrest herein.

SALTER S. CLARK.

Sworn to before me this 2d day of November, 1893.

F. H. KNIGHT,  
*Notary Public, N. Y. City.*

14 Supreme Court, Kings County.

Whereas, the plaintiff above named, has made application to one of the justices of the above-named court to arrest the above-named defendant, in an action for false imprisonment and other personal injuries:

Now, therefore, we, George F. Underhill, the plaintiff, of No. 260 Forty-fifth street, in the city of Brooklyn, and Clarence Kenyon, of No. 170 St. Marks avenue, in said city of Brooklyn, and Charles E. Phelps, of Bay Shore, Long island, State of New York, do hereby, pursuant to the statute in such case made and provided, jointly and severally undertake, that if the defendant in the action do recover judgment therein, or, if it is finally decided that the plaintiff is not entitled to an order of arrest, the plaintiff in said action will pay all costs which may be awarded to the defendant and all damages which he may sustain by reason of the arrest in said action, and not exceeding the sum of two thousand dollars.

Dated New York, November 2d, 1893.

GEORGE F. UNDRRHILL.  
CHARLES E. PHELPS.  
CLARENCE KENYON.

CITY AND COUNTY OF NEW YORK, 88:

Clarence Kenyon, being duly sworn, says that he is a resident  
and householder within the State of New York, and worth  
15 double the sum specified in the above undertaking, over all  
the debts and liabilities which he owes or has incurred, and  
exclusive of property exempt by law from levy and sale under an  
execution.

CLARENCE KENYON.

Sworn to before me this 2d day of November, 1893.

F. H. KNIGHT,  
*Notary Public, N. Y. Co.*

CITY AND COUNTY OF NEW YORK, *ss*:

Charles E. Phelps, being duly sworn, says that he is a resident and a freeholder within the State of New York, and worth double the amount specified in the above undertaking, over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

CHAS. E. PHELPS.

Sworn to before me this 2d day of November, 1893.

F. H. KNIGHT,  
*Notary Public, N. Y. Co.*

CITY AND COUNTY OF NEW YORK, *ss*:

I certify that on this 2d day of November, 1893, before me personally appeared the above-named George F. Underhill, Clarence Kenyon and Charles E. Phelps, known to me, and to me known to be the individuals described in, and who executed the above undertaking, and severally acknowledged that they executed the same.

F. H. KNIGHT,  
*Notary Public, N. Y. Co.*

(Endorsed:) Order to arrest, &c., affidavit and undertaking on order to arrest.

16 Know all men by these presents, that Jose Manuel Hernandez, as principal, and Elizabeth Cadenas, as surety, are holden and stand firmly bound unto George F. Underhill in the penal sum of one thousand dollars, for the payment whereof well and truly to be made unto the said George F. Underhill, his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Upon condition nevertheless that whereas, one Jose Manuel Hernandez has petitioned the supreme court of the State of New York, in and for the county of Kings, for the removal of a certain cause therein pending, wherein the said George F. Underhill is plaintiff, and the said Jose Manuel Hernandez is defendant, to the circuit court *court* of the United States in and for the eastern district of New York.

Now, if the said Jose Manuel Hernandez shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall duly enter such special bail therein as may have been originally requisite herein, then this obli-

gation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, the said Jose Manuel Hernandez and Elizabeth Cadenas have hereunto set their hands and seals this 14th day of December, A. D. 1893.

JOSE MANUEL HERNANDEZ, [SEAL]  
By COUDERT BROTHERS, *His At'tys.*  
ELIZABETH CADENAS. [SEAL]

17 STATE OF NEW YORK, {  
City and County of New York, }<sup>ss:</sup>

Elizabeth Cadenas, being duly sworn, deposes and says: I reside in the city of Brooklyn, county of Kings, and State of New York, and am a freeholder therein; and am worth the sum of two thousand dollars over and above all property exempt from execution.

ELIZABETH CADENAS.

Sworn to before me this 14th day of December, 1893.

RICHARD TONE PETTIT,  
[L. s.] Notary Public, No. 13, City, County,  
and State of New York.

STATE OF NEW YORK, {  
City and County of New York, }<sup>ss:</sup>

On this 14th day of December, 1893, before me personally came Paul Fuller, to me known and known to me to be a member of the firm of Coudert Brothers and the same individual who executed the foregoing instrument in the name of Jose Manuel Hernandez, therein described as principal, by Coudert Brothers, his attorneys, and acknowledged to me that he executed the same as the act and deed of his said firm of Coudert Brothers, attorneys, for Jose Manuel Hernandez for the purposes therein set forth.

And on the same day also appeared before me Elizabeth Cadenas, to me known to be the other individual described in and who executed the foregoing instrument and acknowledged to me that she executed the foregoing instrument and acknowledged to me that she executed the same for the purposes therein set forth.

RICHARD TONE PETTIT,  
Notary Public, No. 13, City, County, and State of New York.

(Endorsed:) Undertaking on removal to circuit court. Accepted and approved Dec. 15, 1893. Edgar M. Cullen, J.

18 At a special term of the supreme court held in and for the county of Kings, at the county court-house in the city of Brooklyn, on this 15th day of December, 1893.

Present: Hon. Edgar M. Cullen, justice.

GEORGE F. UNDERHILL, Plaintiff,  
*against*  
JOSE MANUEL HERNANDEZ, Defendant.

On reading and filing the petition of Jose Manuel Hernandez, verified the 14th day of December, 1893, and the complaint herein, by which it appears that the controversy herein is between a citizen of this State and a citizen of a foreign nation, and that matter and amount in dispute exceeds exclusively of costs and interest the sum or value of two thousand dollars, and the defendant having filed the good and sufficient bond required by law for his entering in the circuit court of the United States for the eastern district of New York on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if the said court shall hold that this suit was wrongfully or improperly removed thereto, and also for his appearing and entering such special bail therein as was originally requisite therein; and on motion of Coudert Brothers, attorneys for defendants, it is

Ordered, that this cause be and the same hereby is, removed from this court to the circuit court of the United States for the eastern district of New York, and that this court proceed no further therein.

Granted December 15, 1893.

EDGAR M. CULLEN, J. S. C.

JOHN COTTIER, Clerk.

19 Supreme Court of New York, Kings County.

To the honorable the supreme court of the State of New York, held  
in and for the county of Kings:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs and interest, the sum or value of two thousand dollars, that is to say, the plaintiff's demand against this defendant is for \$75,000 (seventy-five thousand dollars), as the alleged damages which the plaintiff seeks to recover for alleged damages by him suffered in person and property through the alleged fault of the defendant.

That the controversy in said suit is between a citizen of this State and a citizen of a foreign nation; the plaintiff having been at the time of the commencement of this suit as he still is, a citizen of the United States residing in the city of Brooklyn, in the State of New York, and this defendant having been at the time of the commencement of this suit, as he still is, a citizen and resident of the Republic of Venezuela.

And your petitioner offers herewith a good and sufficient surety.

for his entering in the circuit court of the United States for the eastern district of New York, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed therefrom, and also 20 for his appearing and entering such special bail therein as was originally requisite therein.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into the said circuit court of the United States in and for the eastern district of New York; and he will ever pray.

JOSE MANUEL HERNANDEZ,  
By COUDERT BROTHERS,  
*His Attorneys.*

STATE OF NEW YORK, }  
*City and County of New York,* }<sup>ss:</sup>

Paul Fuller, being duly sworn, deposes and says: I am a member of the firm of Coudert Brothers, attorneys for the defendant and petitioner herein, by whom the foregoing petition is signed in the name and on behalf of the said petitioner, the latter being absent from this State and the United States at the date hereof. The foregoing petition is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

PAUL FULLER.

Sworn to before me this 14th day of December, 1893.

RICHARD TONE PETTIT,  
*Notary Public, No. 13, City, County, and State of New York.*

21 STATE OF NEW YORK, }  
*City and County of New York,* }<sup>ss:</sup>

On this 14th day of December, 1893, in the city and county of New York, before me, a notary public in and for said county, personally appeared Paul Fuller, to me personally known and known to me to be the same person who executed the foregoing petition, and then and there acknowledged to me that he had executed the same in the name and on behalf of the petitioner therein named.

RICHARD TONE PETTIT,  
*Notary Public, No. 13, City, County, and State of New York.*

STATE OF NEW YORK, }  
*County of Kings,* }<sup>ss:</sup>

I, John Cottier, clerk of the county of Kings, and clerk of the supreme court of the State of New York in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original notice of appearance, order

of arrest, affidavits of George F. Underhill and Jennie L. Underhill, Salter S. Clark, undertaking on arrest, petition, bond, and order removing case to U. S. circuit court, filed in my office on November 14th and December 15th, 1893, respectively, and that the same are true transcripts thereof, and of the whole of such originals.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and court, this 22d day of December, 1893.

JOHN COTTIER, Clerk.

22 United States Circuit Court, Eastern District of New York.

Jose Manuel Hernandez, the defendant in the above-entitled action, by Coudert Brothers, his attorneys, answers the complaint herein as follows:

I. He denies each and every allegation in the said complaint contained.

II. For a further and separate defense, the defendant says that whatever was in fact done or authorized by him in or about the matters or events to which, as he is informed and believes, the allegations of the complaint refer, was so done or authorized by him in his official capacity as the chief executive representative of the Venezuelan government in and about Ciudad Bolivar, in the lawful and proper exercise and discharge of his duty and authority as such official, and not otherwise.

Wherefore, the defendant demands judgment dismissing the complaint with costs.

COUDERT BROTHERS,  
*Defendant's Attorneys.*

23 CITY AND COUNTY OF NEW YORK, 88:

Jose Manuel Hernandez, being duly sworn, says *the* he is the defendant in the foregoing answer named; that he has read the said answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be alleged on information and belief, as to which matters he believes it to be true.

JOSE MANUEL HERNANDEZ

Sworn to before me January 2, 1894.

RICHARD TONE PETTIT.

[SEAL.]

*RICHARD TOWN FLETCHER,  
Notary Public, No. 13, City, County, and  
State of New York.*

(Endorsed:) United States circuit court, eastern district of New York. George F. Underhill, plaintiff, against Jose Manuel Hernandez, defendant. Answer. Coudert Brothers, defendant's attorneys, 68 and 70 William street, New York. Filed January 4, 1894.

24 At a stated term of the circuit court of the United States of America, for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the city of Brooklyn, on the 27th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Hon. Hoyt H. Wheeler, district judge holding the court.

GEORGE F. UNDERHILL  
vs.  
JOSE MANUEL HERNANDEZ. }

Cause called. Trial ordered.

Appearances: Messrs. Logan, Clark & Demond, for plaintiff; Messrs. Coudert Brothers, for defendant.

Jury ordered and drawn, as follows:

Robert T. Mills,	John B. McDonald,
James W. Carmichael,	James M. Baker,
Silas W. Driggs,	George G. Leighton,
McCombs Green,	John H. Curtiss,
Richard U. Lee,	John W. Cummings,
William T. Lees,	August Deiter,
George G. Leighton, excused.	George H. Heinbockel, drawn.

Jury sworn.

Mr. Clarke addresses the jury for plaintiff.

Mr. Coudert moves to direct verdict for the defendant on the opening of counsel for plaintiff. Motion denied.

25 EMMETT R. OLcott, called as a witness for plaintiff, sworn:

Examined by Mr. CLARKE:

No cross-examination.

Copy of Code of Venezuela offered in evidence.

Copy of constitution of Venezuela offered in evidence.

Letter from Department of State offered in evidence.

Contract for water works marked for identification.

GEORGE F. UNDERHILL, called as a witness for plaintiff and sworn:

Examined by Mr. CLARKE:

Spanish letter and translation offered in evidence.

Photos offered in evidence. Plan offered in evidence.

Cross-examined by Mr. COUDERT:

Hearing suspended to March 24, 1894.

MARCH 28, 1894.

Stated Term.

Hearing resumed. Same appearances.

GEORGE F. UNDERHILL, recalled as a witness :

Cross-examined by Mr. COUDERT :

JENNIE L. UNDERHILL, called as a witness for plaintiff and sworn :

Examined by Mr. CLARKE :

Mr. Clarke reads the deposition of James Rowe.

26 Cross-examined by Mr. COUDERT :

JAMES WETHERELL, called as a witness for plaintiff and sworn :

Examined by Mr. CLARK :

Cross-examined by Mr. COUDERT :

Plaintiff rests.

Motion to direct verdict for defendant by Mr. Coudert. Mr. Clark opposed. Motion argued and submitted.

Plaintiff's counsel requests the court for leave to go to the jury upon questions submitted to the number of eleven.

Request denied. Exception taken by plaintiff's counsel.

Hearing suspended to March 29, 1894, at 10.30 a. m.

MARCH 29, 1894.

Stated Term.

Hearing resumed. Same appearances.

Motion to direct verdict for defendant granted.

Exception taken.

Verdict taken for defendant by direction of court. Stay of judgment, and 60 days to make a case or bill of exceptions granted.

27 United States Circuit Court for the Eastern District of New York.

GEORGE F. UNDERHILL, Plaintiff,	} Judgment.
against	
JOSE MANUEL HERNANDEZ, Defendant.	June 1, 1894.

The issues in this action having been brought on for trial before Hon. Hoyt H. Wheeler, district judge, and a jury, at a term of this court, held at the post-office building, in the city of Brooklyn, on the 27th and 28th days of March, 1894, and the plaintiff having appeared herein by Messrs. Logan, Clark & Demond, and the defendant having appeared herein by Messrs. Coudert Brothers, and the defendant herein having moved, on the close of the plaintiff's case, for a direction by the court of a verdict in defendant's favor, and the court having granted said motion, with a stay of sixty days

from said 28th day of March, 1894, of all proceedings in this action, and the jury having thereupon rendered a verdict in favor of the defendant, and the defendant's costs and disbursements having been taxed at the sum of fifty-nine  $\frac{25}{100}$  dollars (\$59.25);

Now, on motion of Coudert Brothers, attorneys for the above-named defendant, it is

Ordered, adjudged, and decreed that Jose Manuel Hernandez, the defendant herein, recover of George F. Underhill, the plaintiff herein, the sum of fifty-nine  $\frac{25}{100}$  dollars (\$59.25), his costs and disbursements herein.

By the court.

B. LINCOLN BENEDICT, Clerk.

28 United States Circuit Court, Eastern District of New York.

GEORGE F. UNDERHILL, Plaintiff,      }  
*against*    } Bill of Exceptions.  
 JOSE MANUEL HERNANDEZ, Defendant.      }

Be it remembered, that afterward—to wit, on the 27th day of March, in the year of our Lord one thousand eight hundred and ninety-four—at a stated term of said court, begun and holden in Brooklyn, in and for the eastern district of New York, before his honor Hoyt H. Wheeler, district judge, duly assigned to hold said court, the issue joined in the above-stated cause between said parties, under the pleadings herein, came on to be heard before the said judge and a jury, the plaintiff being represented by Messrs. Logan, Clark & Demond, his attorneys, and the defendant being represented by Messrs. Coudert Bros., his attorneys, and upon the trial of that issue the attorneys for the said plaintiff, to maintain and prove the said issue on plaintiff's part, offered the following evidence, and the following proceedings were had, this bill of exceptions containing all of the evidence given on said trial.

29 The jury having been empanelled and sworn, the counsel for plaintiff opens the case, and thereupon EMMET R. OL'COTT was duly sworn and examined as a witness for the plaintiff, and testified as follows:

I am a lawyer, and have been since 1873 or 1874. My firm is Olcott, Mestre & Gonzalez, and has a specialty in questions of foreign law, in countries especially of Spanish origin. My firm are the lawyers for the Spanish government, Mexican government, and various of the republics of Central and South America. My firm have made a specialty of questions of foreign law, and in that connection have had business to do with persons dealing with the Kingdom of Spain, and republics in countries having their origin from Spain, in the way of government, countries on this continent wherever the Spanish language is spoken, including Venezuela. We now represent the consular representatives and ministers of various of those countries.

Q. And you have delivered opinions on such subjects?

A. We are constantly called on to deliver opinions on questions relating to foreign law, and the laws of these countries I mention. Our opinion has been taken on different occasions, and is taken and accepted as showing the law of those countries by the authorities of the city of Brooklyn, New York, of the United States Treasury Department, and by corporations and individuals generally. I am familiar in general with the form in which the body of civil law exists in Venezuela, and did in 1892. The ordinary civil law in Venezuela is in the form of a code.

The plaintiff's counsel produces a book, purporting to be the Code of Venezuela, and the defendant's counsel, conceding that the book is the official copy of the code of that country at its date, 1874, but objecting that it is not evidence of the present law, the court admits the book as a printed code and being the law of that country.

30 The book is marked "Plaintiff's Exhibit 1, March 27, 1894."

Thereupon, at the request of the plaintiff's counsel, the witness translated various portions of said book, as follows:

"Law 6, article 24. As to persons liable civilly for crimes and misdemeanors.

Article 24. Every person, liable criminally for any crime or misdemeanor, is also liable civilly."

Law 7, article 30. Liability civilly fixed under the last preceding law includes (here follows the numbered lists) "First, restitution; second, reparation for the injury inflicted; third, indemnity for damages."

Article 31 is as to restitution. Article 32 is as to reparation. Article 33 is as to indemnity for damages. Article 34 provides that obligations of the last preceding article under the law shall extend to the representatives of the party liable.

Article 389 under law 6, as to violence, reads: "Violence against persons is committed:

(Subsection 2). By taking them into possession, detaining them or taking them from one place to another against their will, by physical force, similitud authority or the use of threats.

(Subsection 3). Forcing them to do acts that they may rightfully refuse to do or to refrain from others not prohibited to them by the use of the same means.

(Subsection 4). Seriously threatening to do or cause a grievous wrong.

(Subsection 5). Entering in their houses or on their lands against their inhibition.

(Subsection 6). Taking things in their possession, with the motive of payment or indemnity."

Article 391, under the same law, reads, "Whoever commits the violence described in sub-section 2 of such article, 389, shall be punished by imprisonment for the period of from six to eighteen months, and if the secreting or detention do not exceed forty-eight

31 hours, by imprisonment during the period of from one to six months. Such violence is also committed when the person secreted by the person committing it be required to appear personally by any person or public official having right so to require."

Thereupon the plaintiff's counsel offered in evidence the constitution of Venezuela, which was received in evidence and marked Plaintiff's Exhibit 2, March 27, 1894.

The plaintiff's counsel thereupon read to the jury extracts from said constitution of 1891, as follows:

"Article 14. The nation guarantees to Venezuelans:

First. The inviolability of life, capital punishment being abolished in spite of any law that establishes it.

Second. Property, with all its attributes, rights and privileges, will be only subjected to contributions decreed by legislative authority to judicial decision, and to be taken for public works after indemnity and condemnation.

Third. The inviolability and secrecy of correspondence and other private papers.

Fourth. The domestic hearth that cannot be approached, except to prevent the perpetration of crime, and this itself must be done in accordance with law.

Fifth. Personal liberty, and consequently (1) forced recruiting for armed service is abolished; (2) slavery is forever proscribed; (3) slaves that tread the soil of Venezuela are free; and (4) nobody is obliged to do that which the law does not command, nor is impeded from doing that which it does not prohibit."

Plaintiff's counsel also read from article 10, title 1 of said constitution, as follows: "Foreigners shall enjoy the same civil rights as Venezuelans and the same security in their persons and property."

Mr. COUDERT: Don't you finish it?

Mr. CLARK, plaintiff's counsel: "Certainly. They can only take advantage of diplomatic means in accordance with public treaties and in cases when right permits it."

This constitution is dated the 9th day of April, 1891, and a copy of the whole constitution was marked Plaintiff's Exhibit 2, March 27, 1894, as follows:

## 32 CONSTITUTION OF THE UNITED STATES OF VENEZUELA.

### TITLE I.

#### *The Nation.*

#### SECTION 1.—*Of the Territory.*

Article 1. The States that the constitution of March 28, 1864, declared independent and united to form the Venezuelan federation, and that on April 27, 1881, were denominated Apure, Bolivar, Barquisimeto, Barcelona, Carabobo, Cojedes, Cumana, Falcon, Guzman Blanco, Guarico, Guana, Guzman, Maturin, Nueva Esparta,

Portuguesa, Tachira, Trujillo, Yaracuy, Zamora and Zulia are constituted into nine grand political bodies, viz:

The State of Bermudez, composed of Barcelona, Cumana and Maturin; the State of Miranda, composed of Bolivar, Guzman Blanco, Guarico and Neuva Esparta; the State of Carabobo, composed of Carabobo and Nirgua; the State of Zamora, composed of Cojedes, Portuguesa and Zamora; the State of Lara, composed of Barquisimeto and Yaracuy, except the department of Nirgua; the State of Los Andes, composed of Guzman, Trujillo and Tachira; the State of Bolivar, composed of Guayana and Apure; the State of Zulia, and also the State of Faleon.

And they are thus constituted to continue one only nation, free, sovereign and independent, under the title of the United States of Venezuela.

Art. 2. The boundaries of these great States are determined by those that the law of April 28, 1856, that arranged the last territorial division, designated for the ancient provinces until it shall be reformed.

Art. 3. The boundaries of the United States of the Venezuelan federation are the same that in 1810 belonged to the old captaincy general of Venezuela.

Art. 4. The States that are grouped together to form the 33 grand political bodies will be called sections. These are equal among themselves; the constitutions prescribed for their internal organism must be harmonious with the federative principles established by the present compact, and the sovereignty not delegated resides in the State without any other limitations than those that devolve from the compromise of association.

## SECTION II.—*Of Venezuelans.*

Art. 5. These are Venezuelans, viz:

First. All persons that may have been or may be born on Venezuelan soil, whatever may be the nationality of their parents.

Second. The children of a Venezuelan father or mother that may have been born on foreign soil, if they should come to take up their domicile in the country and express the desire to become citizens.

Third. Foreigners that may have obtained naturalization papers; and

Fourth. Those born or that shall be born in any of the Spanish-American republics or in the Spanish Antilles, provided that they may have taken up their residence in the territory of the republic and express a willingness to become citizens.

Art. 6. Those that take up their residence and acquire nationality in a foreign country do not lose the character of Venezuelans.

Art. 7. Males over twenty-one years of age are qualified Venezuelan citizens with only the exceptions contained in this constitution.

Art. 8. All Venezuelans are obliged to serve the nation according to the prescriptions of the laws, sacrificing his property and his life, if necessary, to defend the country.

Art. 9. Venezuelans shall enjoy, in all the States of the Union, the rights and immunities inherent to their condition as citizens of the federation, and they shall also have imposed upon them there the same duties that are required of those that are natives or domiciled there.

Art. 10. Foreigners shall enjoy the same civil rights as Venezuelans and the same security in their persons and property. They can only take advantage of diplomatic means in accordance with public treaties and in cases when right permits it.

Art. 11. The law will determine the rights applicable to the condition of foreigners, according as they may be domiciled or in transit.

## TITLE II.

### *Bases of the Union.*

Art. 12. The States that form the Venezuelan federation reciprocally recognize their respective autonomies; they are declared equal in political entity, and preserve, in all its plenitude, the sovereignty not expressly delegated in this constitution.

Article 13. The States of the Venezuelan federation oblige themselves:

First. To organize themselves in accord with the principles of popular, elective, federal, representative, alternative, and responsible government.

Second. To establish the fundamental regulations of their interior regulation and government in entire conformity with the principles of this constitution.

Third. To defend themselves against all violence that threatens the sectional independence or the integrity of the Venezuelan federation.

Fourth. To not alienate to a foreign power any part of their territory, nor to implore its protection, nor to establish or cultivate political or diplomatic relations with other nations since this last is reserved to the federal power.

Fifth. To not combine or ally themselves with another nation, nor to separate themselves to the prejudice of the nationality of Venezuela and her territory.

35 Sixth. To cede to the nation the territory that may be necessary to the federal district.

Seventh. To cede to the government of the federation the territory necessary for the erection of forts, warehouses, ship yards and penitentiaries, and for the construction of other edifices indispensable to the general administration.

Eighth. To leave to the government of the federation the administration of the Amazonas and Goajira territories, and that of the islands which pertain to the nation, until it may be convenient to elevate them to another rank.

Ninth. To reserve to the powers of the federation all legislative or executive jurisdiction concerning maritime, coastwise and fluvial navigation, and the national roads, considering as such those that

exceed the limits of a State and lead to the frontiers of others and to the federal district.

Tenth. To not subject to contributions the products or articles upon which national taxes are imposed or those that are by law exempt from tax before they have been offered for consumption.

Eleventh. To not impose contributions on cattle, effects or any class of merchandise in transit for another State, in order that traffic may be absolutely free, and that in one section the consumption of others may not be taxed.

Twelfth. To not prohibit the consumption of the products of other States nor to tax their productions with greater general or municipal taxes than those paid on products raised in the locality.

Thirteenth. To not establish maritime or territorial custom-houses for the collection of imports, since there will be national ones only.

Fourteenth. To recognize the right of each State to dispose of its natural products.

Fifteenth. To cede to the government of the federation the administration of mines, public lands and salt mines, in order that the first may be regulated by a system of uniform working, and that the latter may be applied to the benefit of the people.

36 Sixteenth. To respect the property, arsenals and forts of the nation.

Seventeenth. To comply with and cause to be complied with and executed the constitution and laws of the federation and the decrees and orders that the federal power, the tribunals and courts may expedite in use of their attributes and legal faculties.

Eighteenth. To give entire faith to and to cause to be complied with and executed the public acts and judicial procedures of the other States.

Nineteenth. To organize their tribunals and courts for the administration of justice in the State and to have for all of them the same substantive civil and criminal legislation and the same laws of civil and criminal procedure.

Twentieth. To present judges for the court of appeals and to submit to the decision of this supreme tribunal of the States.

Twenty-first. To incorporate the extradition of criminals as a political principle in their respective constitutions.

Twenty-second. To establish direct and public suffrage in popular elections, making it obligatory and endorsing it in the electoral registry. The vote of the suffragist must be cast in full public session of the respective board; it will be inscribed in the registry books that the law prescribes for elections, which cannot be substituted in any other form, and the elector, for himself or by another at his request in case of impediment or through ignorance, will sign the memorandum entry of his vote, and without this requisite it cannot be claimed that in reality he has voted.

Twenty-third. To establish a system of primary education and that of arts and trades.

Twenty-fourth. To reserve to the powers of the federation the laws and provisions necessary for the creation, conservation and

progress of general schools, colleges, or universities designed for the teaching of the sciences.

37 Twenty-fifth. To not impose duties upon the national employés, except in the quality of citizens of the State, and inasmuch as these duties may not be incompatible with the national public service.

Twenty-sixth. To furnish the proportional contingent that pertains to them to compose the national public forces in time of peace or war.

Twenty-seventh. To not permit in the States of the federation forced enlistments and levies that have or may have for their object an attack on liberty or independence, or a disturbance of the public order of the nation, of other States, or of another nation.

Twenty-eighth. To preserve a strict neutrality in the contentions that may arise in other States.

Twenty-ninth. To not declare or carry on war in any case, one State with another.

Thirtieth. To defer and submit to the decision of the congress or the high federal court in all the controversies that may arise between two or more States when they cannot, between themselves and by pacific measures, arrive at an agreement. If, for any cause, they may not designate the arbiter to whose decision they may submit, they leave it, in fact, to the high federal court.

Thirty-first. To recognize the competency of congress and of the court of appeals to take cognizance of the causes that, for treason to the country or for the infraction of the constitution and laws of the federation, may be instituted against those that exercise executive authority in the States, it being their duty to incorporate this precept in their constitutions. In these trials the modes of procedure that the general laws prescribe will be followed and they will be decided in consonance with those laws.

Thirty-second. To have as the just income of the States, two-thirds of the total product of the impost collected as transit tax in all the custom-houses of the Republic and two-thirds of that collected from mines, public lands and salt mines administered by the federal power, and to distribute this income among all the States of the federation in proportion to the population of each.

38 Thirty-third. To reserve to the federal power the amount of the third part of the income from transit tax, the production of mines, public lands and salt mines, to be invested in the improvement of the country.

Thirty-fourth. To keep far away from the frontier those individuals that, through political motives, take refuge in a State, provided that the State interested requests it.

### TITLE III.

#### *Guarantees of Venezuelans.*

Article 14. The nation guarantees to Venezuelans:

First. The inviolability of life, capital punishment being abolished in spite of any law that established it.

Second. Property, with all its attributes, rights and privileges, will only be subjected to contributions decreed by legislative authority, to judicial decision, and to be taken for public works after indemnity and condemnation.

Third. The inviolability and secrecy of correspondence and other private papers.

Fourth. The domestic hearth, that cannot be approached except to prevent the perpetration of crime, and this itself must be done in accordance with law.

Fifth. Personal liberty, and consequently (1) forced recruiting for armed service is abolished; (2), slavery is forever proscribed; (3), slaves that tread the soil of Venezuela are free, and (4), nobody is obliged to do that which the law does not command, nor is impeded from doing that which it does not prohibit.

Sixth. The freedom of thought, expressed by word or through the press, is without any restriction to be submitted to previous censure. In case of calumny or injury or prejudice to a third party, the aggrieved party shall have every facility to have his complaints investigated before competent tribunals of justice in accordance with the common laws.

Seventh. The liberty of traveling without passport, to change the domicile, observing the legal formalities, and to depart from and return to the Republic, carrying off and bringing back his or her property.

Eighth. The liberty of industry and consequently the proprietorship of discoveries and productions. The law will assign to the proprietors a temporary privilege or the mode of indemnity in case that the author agrees to its publication.

Ninth. The liberty of reunion and assembling without arms, publicly or privately, the authorities being prohibited from exercising any act of inspection or coercion.

Tenth. The liberty of petition, with the right of obtaining action by resolution; petition can be made by any functionary, authority or corporation. If the petition shall be made in the name of various persons, the first five will respond for the authenticity of the signatures and all for the truth of the assertions.

Eleventh. The liberty of suffrage at popular elections without any restrictions, except to males under eighteen years of age.

Twelfth. The liberty of instruction will be protected to every extent. The public power is obliged to establish gratuitous instruction in primary schools, the arts and trades.

Thirteenth. Religious liberty.

Fourteenth. Individual security, and therefore (1) no Venezuelan can be imprisoned or arrested in punishment for debts not founded in fraud or crime; (2) nor to be obliged to lodge or quarter soldiers in his house; (3) nor to be judged by special commissions or tribunals, but by his natural judges and by virtue of laws dictated before the commission of the crime or act to be judged; (4) nor to be imprisoned nor arrested without previous summary information that a crime meriting corporal punishment has been committed, and a written order from the functionary that orders the imprisonment,

stating the cause of arrest, unless the person may be caught in the commission of the crime; (5) nor to be placed in solitary confinement for any cause; (6) nor to be obliged to give evidence, 40 in criminal causes, against himself or his blood relations within the fourth degree of consanguinity or against his relations by marriage within the second degree, or against husband or wife; (7) nor to remain in prison when the reasons that caused the imprisonment have been dissipated; (8) nor to be sentenced to corporal punishment for more than ten years; (10) nor to remain deprived of his liberty for political reasons when order is re-established.

Art. 15. Equality: in virtue of which (1) all must be judged by the very same laws and subject to equal duty, service and contributions; (2) no titles of nobility, hereditary honors and distinctions will be conceded, nor employments or offices the salaries or emoluments of which continue after the termination of service; (3) no other official salutation than "citizen" and "you" will be given to employees and corporations.

The present enumeration does not impose upon the States the obligation to accord other guarantees to their inhabitants.

Art. 16. The laws in the States will prescribe penalties for the infractions of these guarantees, establishing modes of procedure to make them effective.

Art. 17. Those who may issue, sign or execute or order executed any decrees, orders or resolutions that violate or in any manner infringe upon the guarantees accorded to Venezuelans are culpable and must be punished according to the law. Every citizen is empowered to bring charges.

#### TITLE IV.

##### *Of the National Legislature.*

###### SECTION I.

Art. 18. The national legislature will be composed of two chambers, one of senators and another of deputies.

41 Art. 19. The States will determine the mode of election of deputies.

###### SECTION II.—*Of the Chamber of Deputies.*

Art. 20. To form the chamber of deputies, each State will name, by popular election in accordance with paragraph 22 of article 13 of this constitution, one deputy for each thirty-five thousand inhabitants, and another for an excess not under fifteen thousand. In the same manner it will elect alternates in equal number to the principals.

Art. 21. The deputies will hold office for four years, when they will be renewed in their entirety.

Art. 22. The prerogatives of the chamber of deputies are: First, to examine the annual account that the President of the United

States of Venezuela must render; second, to pass a vote of censure of the ministers of the cabinet, in which event their posts will be vacant; third, to hear charges against the persons in charge of the office of the national executive for treason to the country, for infraction of the constitution, or for ordinary crimes; against the ministers and other national employees for infraction of the constitution and laws and for fault in the discharge of their duties according to article 75 of this constitution and the general laws of the Republic. This attribute is preventative, and neither contracts nor diminishes those that other authorities have to judge and punish.

Art. 23. When a charge is instituted by a deputy or by any corporation or individual, the following rules will be observed: (1) There will be appointed, in secret session, a commission of three deputies; (2) the commission will, within three days, render an opinion, declaring whether or not there is foundation for instituting a cause; (3) the chamber will consider the information and decide upon the cause by the vote of an absolute majority of the members present, the accusing deputy abstaining from voting.

42 Art. 24. The declaration that there is foundation for the cause operates to suspend from office the accused and incapacitates him for the discharge of any public function during the trial.

### SECTION III.—*Of the Chamber of the Senate.*

Art. 25. To form this chamber each State, through its respective legislature, will elect three principal senators and an equal number of alternates, to supply the vacancies that may occur.

Art. 26. To be a senator it is required that he shall be a Venezuelan by birth and thirty years of age.

Art. 27. The senators will occupy their posts for four years and be removed in their entirety.

Art. 28. It is the prerogative of the senate to substantiate and decide the causes initiated in the chamber of deputies.

Art. 29. If the cause may not have been concluded during the sessions, the senate will continue assembled for this purpose only until the cause is finished.

### SECTION IV.—*Dispositions of the Chamber in Common.*

Art. 30. The national legislature will assemble on the 20th day of February of each year, or as soon thereafter as possible, at the capital of the United States, without the necessity of previous notice. The sessions will last for seventy days, to be prolonged until ninety days, at the judgment of the majority.

Art. 31. The chamber will open their sessions with two-thirds of their number at least; and, in default of this number, those present will assemble in a preparatory commission and adopt measures for the concurrence of the absentees.

Art. 32. The sessions having been opened, they may be continued by two-thirds of those who may have installed them, provided that the number is not less than half of all the members elected.

43 Art. 33. Although the chambers deliberate separately, they may assemble together in congress when the constitution and laws provide for it, or when one of the two chambers may deem it necessary. If the chamber that is invited shall agree, it remains to it to fix the day and the hour of the joint session.

Art. 34. The sessions will be public and secret at the will of the chamber.

Art. 35. The chambers have the right: (1) to make rules to be observed in the sessions and to regulate the debates; (2) to correct infractors; (3) to establish the police force in the hall of sessions; (4) to punish or correct spectators who create disorder; (5) to remove the obstacles to the free exercise of their functions; (6) to command the execution of their private resolutions; (7) to judge of the qualifications of their members, and to consider their resignations.

Art. 36. One of the chambers cannot suspend its sessions nor change its place of meeting without the consent of the other; in case of disagreement they will reassemble together and execute that which the majority resolves.

Art. 37. The exercise of any other public function, during the sessions, is incompatible with those of a senator or deputy. The law will specify the remuneration that the members of the national legislature shall receive for their services.

And whenever an increase of said remunerations is decreed, the law that sanctions it will not begin to be in force until the following period, when the chambers that sanctioned it shall have been renewed in their entirety.

Art. 38. The senators and deputies shall enjoy immunity from the 20th day of January of each year until thirty days after the close of the sessions, and this consists in the suspension of all civil or criminal proceeding, whatever may be its origin or nature; when

44 any one shall perpetrate an act that merits corporal punishment, the investigation shall continue until the end of the summing up, and shall remain in this state while the term of immunity continues.

Art. 39. The congress will be presided over by the president of the senate and the presiding officer of the chamber of deputies will act as vice-president.

Art. 40. The members of the chambers are not responsible for the opinions they express or the discourses they pronounce in session.

Art. 41. Senators and deputies that accept office or commission from the national executive thereby leave vacant the post of legislators in the chambers to which they were elected.

Art. 42. Nor can senators and deputies make contracts with the general government or conduct the prosecution of claims of others against it.

#### SECTION V.—*Prerogatives of the National Legislature.*

Art. 43. The national legislature has the following prerogatives: (1) to dissolve the controversies that may arise between two or more States; (2) to locate the federal district in an unpopulated territory

not exceeding three miles square, where will be constructed the capital city of the Republic. This district will be neutral territory, and no other elections will be there held than those that the law determines for the locality. The district will be provisionally that which the constituent assembly designated or that which the national legislature may designate; (3) to organize everything relating to the custom-houses, whose income will constitute the treasure of the Union until those incomes are supplied from other sources; (4) to dispose in everything relating to the habitation and security of ports and seacoasts; (5) to create and organize the postal service and to fix the charges for transportation of correspondence; (6) to form the national codes in accordance with paragraph 19, article 13 of this constitution; (7) to fix the value, type, law, weight and coinage of national money, and to regulate the admission and circulation of foreign money; (8) to designate the coat of arms and the national flag which will be the same for all the States; (9) to create, abolish and fix salaries for national offices; (10) to determine everything in relation to the national debt; (11) to contract loans upon the credit of the nation; (12) to dictate necessary measures to perfect the census of the current population and the national statistics; (13) to annually fix the armed forces by sea and land and to dictate the army regulations; (14) to decree rules for the formation and substitution of the forces referred to in the preceding clause; (15) to declare war and to require the national executive to negotiate peace; (16) to ratify or reject the contracts for national public works made by the president with the approval of the federal council, without which requisite they will not be carried into effect; (17) to annually fix the estimates for public expenses; (18) to promote whatever conduces to the prosperity of the country and to its advancement in the general knowledge of the arts and sciences; (19) to fix and regulate the national weights and measures; (20) to grant amnesties; (21) to establish, under the names of territories, special regulations for the government of regions inhabited by unconquered and uncivilized Indians. Such territories will be under the immediate supervision of the executive of the Union; (22) to establish the modes of procedure and to designate the penalties to be imposed by the senate in the trials originated in the chamber of deputies; (23) to increase the basis of population for the election of deputies; (24) to permit or refuse the admission of foreigners into the service of the Republic; (25) to make laws in respect to retirements from the military service and army pensions; (26) to determine the mode of conceding military rank or promotion; (27) to elect the federal council provided for in this constitution and to revoke the alternates of the senators and deputies who may have been chosen for it.

**Art. 44.** Besides the preceding enumeration the national legislature may pass such laws of a general character as may be necessary, but in no case can they be promulgated, much less executed, if they

conflict with this constitution, which defines the prerogatives of the public powers in Venezuela.

#### SECTION VI.—*Of the Making of Laws.*

Art. 45. The laws and decrees of the national legislature may be proposed by the members of either chamber, provided that the respective projects are conformed to the rules established for the parliament of Venezuela.

Art. 46. After a project may have been presented, it will be read and considered in order to be admitted: and if it is, it must undergo three discussions, with an interval of at least one day between each, observing the rules established for debate.

Art. 47. The projects approved in the chamber in which they were originated will be passed to the other for the purposes indicated in the preceding article, and if they are not rejected they will be returned to the chamber whence they originated, with the amendments they may have undergone.

Art. 48. If the chamber of their origin does not agree to the amendments, it may insist and send its written reasons to the other. They may also assemble together in congress and deliberate, in general commission, over the mode of agreement, but if this cannot be reached, the project will be of no effect after the chamber of its origin separately decides upon the ratification of its insistence.

47 Art. 49. Upon the passing of the projects from one to the other chamber, the days on which they have been discussed will be stated.

Art. 50. The law reforming another law must be fully engrossed and the former law in all its parts, will be annulled.

Art. 51. In the laws this form will be used: "The Congress of the United States of Venezuela decrees."

Art. 52. The projects defeated in one legislature cannot be reintroduced except in another.

Art. 53. The projects pending in a chamber at the close of the sessions must undergo the same three discussions in succeeding legislatures.

Art. 54. Laws are annulled with the same formalities established for their sanction.

Art. 55. When the ministers of cabinet may have sustained in a chamber, unconstitutionality of a project by word or in writing, and, notwithstanding this, it may have been sanctioned as law, the national executive, with the affirmative vote of the federal council, will suspend its execution and apply to the legislatures of the States, asking their vote in the matter.

Art. 56. In case of the foregoing article, each State will represent one vote expressed by the majority of the members of the legislature present, and the result will be sent to the high federal court in this form "I confirm" or "I reject."

Art. 57. If a majority of the legislatures of the States agree with the federal executive, the high federal court will confirm the suspension and the federal executive himself will render an account

to the next congress relative to all that has been done in the matter.

Art. 58. The laws will not be observed until after being published in the solemn form established.

48 Art. 59. The faculty conceded to sanction a law is not to be delegated.

Art. 60. No legislative disposition will have a retroactive effect, except in matters of judicial procedure and that which imposes a lighter penalty.

#### TITLE V.

##### *Of the General Power of the Federation.*

Art. 61. There will be a federal council composed of one senator and one deputy for each State and of one more deputy for the federal district, who will be elected by the congress each two years from among the respective representations of the States composing the federation and from that federal district.

This election will take place in the first fifteen days of the meeting of congress, in the first and third year of the constitutional period.

Art. 62. The federal council elects from its members the President of the United States of Venezuela, and in the same manner the person who shall act in his stead in case of his temporal or permanent disability during his term. The election of a person to be President of the United States of Venezuela who is not a member of the federal council, as well as of those who may have to act in his stead in case of his temporal or permanent disability, is null of right and void of efficiency.

Art. 63. The members of the federal council hold office for two years, the same as the President of the United States of Venezuela, whose term is of equal duration; and neither he nor they can be re-elected for the term immediately succeeding, although they may return to occupy their posts as legislators in the chambers to which they belong.

Art. 64. The federal council resides in the district and exercises the functions prescribed in the constitution. It cannot deliberate with less than an absolute majority of all its members; it dictates the interior regulations to be observed in its deliberations, and annually appoints the person who shall preside over its sessions.

#### SECTION I.

Art. 65. The prerogatives of the President of Venezuela are: (1) To appoint and remove the cabinet ministers; (2) to preside over the cabinet, in whose discussions he will have a vote, and to inform the council of all the matters that refer to the general administration; (3) to receive and welcome public ministers; (4) to sign the official letters to the sovereigns or presidents of other countries; (5) to order the execution of the laws and decrees of national legislature, and to take care that they are complied with and executed;

(6) to promulgate the resolutions and decrees that may have been proposed and received the approbation of the federal council, in conformity with article 66 of this constitution; (7) to organize the federal district and to act therein as the chief civil and political authority established by this constitution; (8) to issue registers of navigation to national vessels; (9) to render an account to Congress, within the first eight days of its annual session, of the cases in which, with the approval of the federal council, he may have exercised all or any of the faculties accorded to him in article 66 of this compact; (10) to discharge the other functions that the national laws entrust to him.

Art. 66. Besides the foregoing prerogatives, that are personal to the President of the United States of Venezuela, he can, with the deliberate vote of the federal council, exercise the following: (1) To protect the nation from all exterior attack; (2) to administer the public lands, mines and salt mines of the States as their delegates; (3) to convoke the national legislature in its regular sessions, and in extraordinary session when the gravity of any subject demands it;

(4) to nominate persons for diplomatic positions, consuls general and consuls; those named for the first and second positions

must be Venezuelans by birth; (5) to direct negotiations and celebrate all kinds of treaties with other nations, submitting these to the national legislature; (6) to celebrate contracts of national interest in accordance with the laws, and to submit them to the legislatures for their approval; (7) to nominate the employees of hacienda, which nominations are not to be made by any other authority. It is required that these employees shall be Venezuelan by birth; (8) to remove and suspend employees of his own free motion, ordering them to be tried if there should be cause for it; (9) to declare war in the name of the Republic when congress shall have decreed it; (10) in the case of foreign war he can, first, demand from the States the assistance necessary for the national defense; second, require, in anticipation, the contributions and negotiate the loans decreed by the national legislature; third, arrest or expel persons who pertain to the nation with which war is carried on and who may be opposed to the defense of the country; fourth, to suspend the guaranties that may be incompatible with the defense of the country, except that of life; fifth, to select the place to which the general power of the federation may be provisionally translated when there may be grave reasons for it; sixth, to bring to trial for treason to the country those Venezuelans who may be, in any manner, hostile to the national defense; seventh, to issue registers to corsairs and privateers, and to prescribe the laws that they must observe in cases of capture; (11) to employ the public force and the powers contained in numbers 1, 2 and 5 of the preceding clause, with the object of re-establishing constitutional order in case of armed insurrection against the institutions of the nation; (12) to dispose of the public force for the purpose of quelling every armed collision between two or more States, requiring them to lay down their arms and submit their controversies to the arbitration to which they are pledged by number 30, article 14 of this constitution; (13)

51 to direct the war and to appoint the person who shall command the army; (14) to organize the national force in time of peace; (15) to concede general or particular exemptions; (16) to defend the territory designated for the federal district when there may be reason to apprehend that it will be invaded by hostile forces.

#### SECTION II.—*Of the Cabinet Ministers.*

Art. 67. The President of the United States of Venezuela shall have the ministers for his cabinet that the law designates. It will determine their functions and duties and will organize their bureaus.

Art. 68. To be a minister of the cabinet it is required that the person shall be twenty-five years of age, a Venezuelan by birth, or five years of naturalization.

Art. 69. The ministers are the natural and proper organs of the President of the United States of Venezuela. All his acts must be subscribed by them, and without such requisite they will not be complied with, nor executed by the authorities, employees or private persons.

Art. 70. All the acts of the ministers must be conformed to this constitution and the laws; their personal responsibility is not saved, although they may have the written order of the president.

Art. 71. The settlement of all business, except the fiscal affairs of the bureaus, will be determined in the council of ministers, and their responsibility is collective and consolidated.

Art. 72. The ministers, within the five first sessions of each year, will render an account to the chambers of what they may have done or propose to do in their respective branches. They will also render written or verbal reports that may be requested of them, reserving only that which, in diplomatic affairs, it may not be convenient to publish.

52 Art. 73. Within the same period they will present to the national legislature the estimates of public expenditures and the general account of the past year.

Art. 74. The ministers have the right to be heard in the chambers, and are obliged to attend when they may be called upon for information.

Art. 75. The ministers are responsible: (1) For treason to the country; (2) for infraction of this constitution or the laws; (3) for malversation of the public funds; (4) for exceeding the estimates in their expenditures; (5) for subornation or bribery in the affairs under their charge, or in the nominations for public employees; (6) for failure in compliance with the decisions of the federal council.

#### TITLE VI.

#### *Of the High Federal Court.*

#### SECTION I.—*Of Its Organization.*

Art. 76. The high federal court will be composed of as many judges as there may be States of this federation, with the following

qualities: (1) A judge must be a Venezuelan by birth; (2) he must be thirty years of age.

Art. 77. For the nomination of judges of the high federal court the congress will convene on the fifteenth day of its regular sessions, and will proceed to group together the representation of each State from which to form a list of as many candidates for principal judges, and an equal number of alternates as there may be States of the federation. The congress, in the same or following session, will elect one principal and one alternate for each State, selecting them from the respective list.

Art. 78. The law will determine the different functions of the judges and other officers of the high federal court.

53 Art. 79. The judges and their respective alternates will hold office for four years. The principals and their alternates in office cannot accept during this period any office in the gift of the executive without previous resignation and lawful acceptance. The infraction of this disposition will be punished with four years of disability to hold public office in Venezuela.

## SECTION II.—*Prerogatives of the High Federal Court.*

Art. 80. The matters within the competence of the high federal court are: (1) To take cognizance of civil or criminal causes that may be instituted against diplomatic officers in those cases permitted by the law of nations; (2) to take cognizance of causes ordered by the president to be instituted against cabinet ministers when they may be accused according to the cases provided for in this constitution. In the matter of the necessity of suspension from office they will request the president to that effect, and he will comply; (4) to have jurisdiction of the causes of responsibility instituted against diplomatic agents accredited to another nation for the wrong discharge of their functions; (5) to have jurisdiction in civil trials when the nation is defendant and the law sanctions it; (6) to dissipate the controversies that may arise between the officials of different States in political order in the matter of jurisdiction or competence; (7) to take cognizance of all matters of political nature that the States desire to submit for their consideration; (8) to declare which may be the law in force when the national and State laws may be found to conflict with each other; (9) to have jurisdiction in the controversies that may result from contracts or negotiations celebrated by the president of the federation; (10) to have jurisdiction in causes of imprisonment; (11) to exercise other prerogatives provided for by law.

### *Of the Court of Appeals.*

Art. 81. The court of appeals referred to in paragraph 20, article 13, of this constitution, is the tribunal of the States; it will be composed of as many judges as there are States of the federation, and their term of office will last for four years.

Art. 82. A judge of the court of appeals must have the following qualifications: (1) He must be an attorney-at-law in the exercise of his profession, and must have had at least six years' practice; (2) he must be a Venezuelan, thirty years of age.

Art. 83. Every four years the legislature of each State will form a list of as many attorneys, with the qualifications expressed in the preceding article, as there are States, and will remit it, duly certified, to the federal council, in order that this body from the respective lists may select a judge from each State in the organization of this high tribunal.

Art. 84. After the federal council may have received the lists from all the States, it will proceed, in public session, to verify the election; forming thereafter a list of the attorneys not elected, in order that from this general list, which will be published in the official paper, the permanent vacancies that may occur in the court of appeals may be filled by lot. The temporary vacancies will be filled according to law.

Art. 85. The court of appeals will have the following prerogatives: (1) To take cognizance of criminal causes or those of responsibility that may be instituted against the high functionaries of the different States, applying the laws of the States themselves in matters of responsibility, and in case of omission of the promulgation of the law of constitutional precept, it will apply to the cause in question the general laws of the land; (2) to take cognizance and to decide in cases of appeal in the form and terms directed by law; (3) to annually report to the national legislature the difficulties that stand in way of uniformity in the matter of civil or criminal legislation; (4) to dispose of the rivalries that may arise between the officers or functionaries of judicial order in the different States of the federation and amongst those of a single State, provided that the authority to settle them does not exist in the State.

### TITLE VIII.

#### *Complemental Regulations.*

Art. 86. The national executive is exercised by the federal council, the President of the United States of Venezuela, or the person who fills his vacancies, in union with the cabinet ministers who are his organs.

The President of Venezuela must be a Venezuelan by birth.

Art. 87. The functions of national executive cannot be exercised outside of the federal district except in the case provided for in number 5, paragraph 10, article 66, of the constitution. When the president, with the approval of the council, shall take command of the army or absent himself from the district on account of matters of public interest that demand it, he cannot exercise any functions and will be replaced by the federal council in accordance with article 62 of this constitution.

Art. 88. Everything that may not be expressly assigned to the

general administration of the nation in this constitution is reserved to the States.

Art. 89. The tribunals of justice in the States are independent; the causes originated in them will be concluded in the same States without any other review than that of the court of appeals in the cases provided for by law.

56 Art. 90. Every act of Congress and of the national executive that violates the rights guaranteed to the States in this constitution, or that attacks their independence, must be declared of no effect by the high court, provided that a majority of the legislatures demands it.

Art. 91. The public national force is divided into naval and land troops, and will be composed of the citizen militia that the States may organize according to law.

Art. 92. The force at the disposal of the federation will be organized from citizens of a contingent furnished by each State in proportion to its population, calling to service those citizens that should render it according to their internal laws.

Art. 93. In case of war the contingent can be augmented by bodies of citizen militia up to the number of men necessary to fill the draft of the national government.

Art. 94. The national government may change the commanders of the public force supplied by the States in the cases and with the formalities provided for the national military law and then their successors will be called for from the States.

Art. 95. The military and civil authority can never be exercised by the same person or corporation.

Art. 96. The nation being in possession of the right of ecclesiastical patronage, will exercise it as the law upon the subject may direct.

Art. 97. The government of the federation will have no other resident employees with jurisdiction or authority in the States than those of the States themselves. The officers of hacienda, those of the forces that garrison national fortresses, arsenals created by law, 57 navy yards, and habilitated ports, that only have jurisdiction in matters peculiar to their respective offices and within the limits of the forts and quarters that they command, are excepted; but even these must be subject to the general laws of the State in which they reside. All the elements of war now existing belong to the national government; nevertheless it is not to be understood that the States are prohibited from acquiring those that they may need for domestic defense.

Art. 98. The national government cannot station troops nor military officers with command in a State, although they may be from that or another State, without permission of the government of the State in which the force is to be stationed.

Art. 99. Neither the national executive nor those of the States can resort to armed intervention in the domestic contentions of a State. It is only permitted to them to tender their good offices to bring about a pacific solution in the case.

Art. 100. In case of a permanent or temporary vacancy in the

office of President of the United States of Venezuela, the States shall be immediately informed as to who has supplied the vacancy.

Art. 101. Exportation in Venezuela is free and no duty can be placed upon it.

Art. 102. All usurped authority is without effect and its acts are null. Every order granted for a requisition, direct or indirect, by armed force or by an assemblage of people in subversive attitude, is null of right and void of efficacy.

Art. 103. The exercise of any function not conferred by the constitution or laws is prohibited to every corporation or authority.

Art. 104. Any citizen may accuse the employees of the nation or the States before the chamber of deputies, before their respective superiors in office or before the authorities designated by law.

58 Art. 105. No payment shall be made from the national treasury for which congress has not expressly provided in the annual estimate, and those that may infringe this rule will be civilly responsible to the national treasury for the sums they have paid out. In every payment from the public treasury the ordinary expenses will be preferred to the extraordinary charges.

Art. 106. The offices of collection and disbursement of the national taxes shall be always separate, and the offices of collection may disburse only the salaries of their respective employees.

Art. 107. When, for any reason, the estimate of appropriations for a fiscal period have not been made, that of the immediate preceding period will continue in force.

Art. 108. In time of elections the public national force or that of the States themselves will remain closely quartered during the holding of popular elections.

Art. 109. In international treaties of commerce and friendship this clause will be inserted, to wit: "All the disagreements between the contracting parties must be decided, without appeal to war, by the decision of friendly powers."

Art. 110. No individual can hold more than one office within the gift of congress and the national executive. The acceptance of any other is equivalent to resignation of the first. Officials that are removable will cease to hold office upon accepting the charge of a senator or deputy when they are dependents of the national executive.

Art. 111. The law will create and designate other national tribunals that may be necessary.

Art. 112. National officers cannot accept gifts, commissions, honors or emoluments from a foreign nation without permission from the national legislature.

59 Art. 113. Armed force cannot deliberate; it is passive and obedient. No armed body can make requisitions nor demand assistance of any kind but from the civil authorities and in the mode and form prescribed by law.

Art. 114. The nation and the States will promote foreign immigration and colonization in accordance with their respective laws.

Art. 115. The law will regulate the manner in which national

officers, upon taking charge of their post, shall take the oath to comply with their duties.

Art. 116. The national executive will negotiate with the Government of America over treaties of alliance and confederation.

Art. 117. The law of nations forms a part of the national legislature. Its dispositions will be specially in force in cases of civil war, which can be terminated by treaties between the belligerents, who will have to respect the humanitarian customs of Christians and civilized nations, the guarantee of life being, in every case, inviolable.

Art. 118. This constitution can be reformed by the national legislature if the legislatures of the States desire it, but there shall never be any reform except in the parts upon which the majority of the States coincide; also a reform can be made upon one or more points when two-thirds of the members of the national legislature, deliberating separately and by the proceedings established to sanction the laws, shall accord it; but, in the second case, the amendment voted shall be submitted to the legislature of the States, and it will stand sanctioned in the point or points that may have been ratified by them.

Art. 119. This constitution will take effect from the day of its official promulgation in each State, and in all public acts and official documents there will be cited the date of the federation to begin with February 20, 1859, and the date of the law to begin with March 28, 1864.

Art. 120. The constitutional period for the offices of the general administration of the republic will continue to be computed from February 20, 1882, the date on which the reformed constitution took effect.

Art. 121. For every act of civil and political life of the States of the federation, its basis of population is that which is determined in the last census approved by the national legislature.

Art. 122. The federal constitution of April 27, 1881, is repealed.

Done in Caracas, in the palace of the federal legislative corps, and sealed with the seal of congress on the 9th day of April, 1891, the 28th year of the law and the 33rd year of the federation.

(Here follow the signatures of the presidents, vice-presidents, and second vice-presidents of the senate and chamber of deputies, together with those of the senators and deputies of the various States, followed by those of the president and members of his cabinet.)

Plaintiff's counsel offered in evidence a letter from the Department of State in this country, dated March 21, 1894, and signed by the acting Secretary. This was admitted in evidence and marked Plaintiff's Exhibit 3, March 27, 1894.

"DEPARTMENT OF STATE,  
WASHINGTON, March 21, 1894.

Messrs. Logan, Clark & Demond, No. 58 William street, New York city.

GENTLEMEN: In reply to your letter of the 16th instant, I have to

61 inform you that the present government of Venezuela was formally recognized by this Government on October 23, 1892. The department is unable to answer your further questions. I am, gentlemen, your obedient servant,

EDWIN F. UHL,  
*Acting Secretary.*

Thereupon plaintiff's counsel called the plaintiff, GEORGE F. UNDERHILL, as a witness for the plaintiff, who, after being duly sworn, was examined as a witness in his own behalf and testified as follows:

I am forty-nine years old. I was born in Eastchester, Westchester county, New York, and was educated as an engineer. I first went to Venezuela in 1881, and went there under contract, as chief engineer of the El Cal-ao gold mines, 250 or 260 miles from Bolivar, Venezuela. That was the first time I went to Bolivar. I left the gold mine and went to Bolivar after I had completed my contract, about the end of that year. I then returned to the United States, expecting to come back in six months again, to take charge of one of these mines. I went back to Bolivar and made a contract with the local government of Venezuela to build water works. The original contract was returned to the government, when a second one was made, during Blanco Buroz's administration, in 1887. I had to deliver the original contract at Bolivar when I disposed of the water works in 1892. The paper shown me is translation of my contract, the second contract.

Plaintiff's counsel offers the same in evidence. It was objected to by the defendant's counsel as irrelevant and immaterial and as having no bearing upon this case, which is for false imprisonment.

The COURT: I don't see the materiality of it.

62 Mr. CLARK, plaintiff's counsel: They claim to justify the false imprisonment and the detention there in Bolivar, under the terms of this contract.

The offer of this contract in evidence by the plaintiff's counsel is denied by the court. Whereupon the plaintiff's counsel then and there excepted.

This contract was marked for identification, "Plaintiff's Exhibit 4," and is as follows:

*"Contract."*

*Translation.*

Dr. V. Blanco Buroz, President of the State of Bolivar sufficiently authorized and George F. Underhill exercising his own rights, both of full age, and residents of this city, have agreed upon the following convention, thereby reforming the contract celebrated between Ramon Amayol, President of the State of Bolivar and George F. Underhill, on the 5th day of October, 1883, for the continuation and maintenance of the aqueduct of Ciudad, Bolivar.

First. The government of the State of Bolivar binds itself:

Art. 1st. To deliver for the term of twelve years, prorogable for three more, and to count from the date of the signing of the present contract, to George F. Underhill, his concessionaires, heirs, or to any company that he may form, in accordance with the commercial code, the full ownership of the aqueduct with all the improvements and additions carried up to this day by the said George F. Underhill, with all its belongings, pipes, pumps, boilers, utensils, tools and all its buildings, viz: the property of the tank whose boundary is as follows: By the north Rosario St., south Progress St., east Constitution St. and west Bovaca St. The property of the pumps, office and workshops situated behind the market and on the shores of the Orinoco river.

Art. 2nd. To obtain from the national government an order 63 to the chiefs of the custom-house of this port, and for the free introduction of all the materials and effects required for the conclusion, extension and preservation of the aqueduct, and during the time that this contract lasts.

Art. 3d. To sanction the regulations which may be established for the good working of the aqueduct and for the collection of the water tax.

Art. 4th. To guarantee to George F. Underhill or to those to whom he may transfer the present contract the exclusive right to extend the pipes necessary to supply the water to this city, not only the mains in the streets but those in the houses, and to dig and pave the streets and make the necessary repairs to the pipes that are laid or may be laid during the term of his contract.

Second. George F. Underhill binds himself—

Art. 1st. To continue with the work of the aqueduct and keep it in good condition so as to supply the water to the city for the term of twelve years, prorogable for three more, from the date of the signing of the present contract and according to what is stipulated.

Art. 2nd. To supply the water by means of said pipes, all cases of unforeseen accidents and force may be excepted, during six hours in the morning, for which end he will have all the necessary machinery and utensils and duplicates required in case of breakage, etc., so as to comply with what is stipulated above.

Art. 3rd. To extend the pipes (in the streets) in the term of six months after the signing of the present contract in the streets stipulated to the register kept by the municipal council of the district house.

Art. 4th. To continue supplying water gratis by means of the pipes of the aqueduct the following: Government house, National College, palace, public jail, hospitals, caridad and 64 las mercedes; Plaza Bolivar, arismendi and market, fountains of the porvenir and concordia and police barracks.

Art. 5th. To deliver to the treasury of the State of Bolivar ten per cent. of the gross receipts of the water tax, this to be paid at the end of each quarter, to begin six months after the signing of this contract.

Art. 6th. To return to the municipality of this district the work

of the aqueduct on the termination of the twelve years stipulated in the present contract, including all the belongings, utensils, extensions, repairs and ornaments appertaining to the same in good condition, Underhill or those to whom he may transfer the present contract, being thereby absolutely separated and without any participation or intervention in said works.

Two of the same tenor of this contract are made and signed.  
Ciudad Bolivar, April 1st, 1887.

(Signed)

V. BLANCO BUROZ.  
GEORGE F. UNDERHILL."

I took the management of the water works there and built them.  
Q. How much have you expended in building the water works?

Defendant's counsel object to this question as irrelevant and immaterial, which objection was sustained by the court, and the plaintiff's counsel then and there duly excepted.

Q. In 1892, what was it earning for you?

Same objection, ruling and exception.

Q. What had been offered you for the water works by some English parties?

Same objection, ruling and exception.

65 The witness continues: I was engaged in connection with the water works in a repairing business. I was generally called upon for any extra mechanical work by the government, by every government that existed, and by the line of steamers. I frequently repaired steamers. I don't know whether I was the only competent engineer there. There was a great many niggers claimed to be. I generally received the money. I was United States consul at Bolivar for about seven years. I was appointed under Chester Arthur, and gave it up during Harrison's administration. My wife came to Bolivar to live in 1886. These photographs now shown me are photographs of the city of Bolivar.

Counsel for plaintiff offers the photographs in evidence, and they are marked "Plaintiff's Exhibits 5, 6, 7 and 8."

These photographs are not printed in the bill of exceptions, but it is agreed that the originals may be exhibited to the appellate court.

The photograph now shown me is a photograph of my residence taken right after the water works were completed, and the other one now shown me represents the rear entrance of my house. At the time these were taken I was appointed consul. I think it was in 1885.

The last two photographs are admitted in evidence and are marked "Plaintiff's Exhibits 9 and 10."

These photographs are not printed in the bill of exceptions, but it is agreed that the originals may be exhibited to the appellate court.

The house shown in these photographs, numbers 9 and 10, is the house I occupied all the time I was at Bolivar, and I was there from 1882 to 1892. That house was not used for any other purpose while I was there, except for myself and family. It was asked for by the different governments several times. It was only used by myself and family.

66 The plan of the city of Bolivar, now shown me, I made myself from memory a day or two ago.

The plan is offered in evidence and marked "Plaintiff's Exhibit No. 11."

This original plan is not printed in the bill of exceptions, but it is agreed that the original may be exhibited to the appellate court.

The different descriptions of places and houses there, as stated on the plan, are as they were in the summer of 1892. I was acquainted with the political troubles, more or less, in Bolivar in 1892. They began along about May or June. They began to bother us then. Gen. Crespo was the revolutionary, the opposition party, against the then present government. I didn't learn of his success until after I got into Trinidad, the 20th of October.

It is admitted by counsel that the revolution succeeded and Crespo entered Caracas on the 6th of October, 1892.

I knew the defendant in the summer of 1892. I met him in Bolivar before August. I knew him to be breeding up in that part of the country a revolution against the government. I met him at the Hotel Bolivar. He was not connected with the government in any way. I knew him as being in revolution against the government. He was arrested by the government authorities in Bolivar at one time. I believe they allowed him to get out or allowed him to go, and they accused him again and he got out of the city. It was a matter of common notoriety that he was raising forces outside of Bolivar. Juan Siegert was president of the State of Bolivar prior to August 13th, 1892. There are three different families of Siegert in Bolivar. The jefe civil at the time was, I think, a man by the name of Alfredo Alcala. They change them about every week or two. The jefe civil corresponds most closely to our mayor. Gen. Santos Carrera was the military delegate that was sent by the general government to Bolivar to take charge of that section of

67 Guiana in the Yuruari district. He was in Bolivar in the early part of August, 1892. I remember his going out with troops against Hernandez. It might have been the 7th, 8th or 9th of August. Word came that there had been a conflict between them. Mrs. Underhill and I were in Bolivar at that time. By "conflict" I mean battle. I think the battle took place on the 10th of August. It was called the battle of Buena Vista (Good View). That was only seven or eight miles from Bolivar. They were coming and going. Word first came to Bolivar of the battle on the night of the 10th of August. Crespo had not reached Caracas at that time. It was impossible for us to know anything there because the telegraph wires had been cut since June by the rebels.

Q. Will you relate what happened with regard to the affair when you were asked by the government to repair the steamer Nutrias. When was that?

A. They had asked me before to repair another one, and I refused.

By Mr. COUDERT: You were asked when it was?

A. The Nurtrias or the Apure?

By Mr. CLARK: The government had asked you to repair the Apure before this?

A. Before this; yes, sir.

By Mr. COUDERT: When was that?

A. That was in June. They wanted me to repair the Apure.

Mr. COUDERT: Then I object.

Mr. CLARK: This is with reference to proving the fact that Mr. Underhill maintained his neutrality in all respects.

Mr. COUDERT: I object to anything that passed between him and the so-called regular government in June.

The COURT: I don't see the materiality of that.

This line of examination was excluded by the court.

68 The witness continues: My wife and I had talked since January, 1891, with respect to a plan to go to Trinidad and live, and we had had correspondence in regard to it. We had been down and examined one or two houses and had chosen one, but we didn't make any contract until the month of February, 1892. My wife and I went down to Trinidad then. We settled on the house, hired it, paid rent and got the receipts for it. We went there on the steamer El Callao, I think, March 21 and 22—Mrs. Underhill and I. I came back on the first steamer, I think. I was there three or four days. I took furniture and servants with me to Trinidad. We had three down there and I took one with me, and took down packages of furniture that we required. Mrs. Underhill stayed there at that time and I came back.

My purpose in coming back was because I had to be in Bolivar at the beginning of every quarter, because I made out my water receipts. That was the reason for coming back. The river was rising at that time. It rose that summer to an unprecedented height. So high as was never known before. In 1890 we had a very high inundation but this was about four feet higher. It was three or four feet higher than it ever had been before. The effect on the water works in 1892 was as follows: One of the boilers, the horizontal tubular boiler, was entirely covered with water half way up to the steam drum. That was the 40-horse boiler—about 40 inches in diameter—and I could just about reach to the top of it from the pump-house lock. It stopped all the pumping at the water works most assuredly. In 1892 the water was half way up to the upright tubular boiler. I stopped pumping in 1892 on July 14. It was not possible to do any more work with the pumping from that time until I left Bolivar. In order to run that length of time I had to build a brick-work 3 feet high and also the foundation of the boilers, and when the water reached that level it was

even with grate bars and I could not do any more. That was July 14, 1892. After that it went about 4 feet higher and went into the stores. There were not two blocks on that river but what was inundated. My wife was in Bolivar August 11, 1892. Her passage had been engaged on the El Callao. I think the El Callao 69 was going the Sunday following, but she was not unloaded. The 11th of August was probably Tuesday. I did not know anything about the victory of Hernandez before the 11th of August.

Q. What happened on the morning of the 11th with you in regard to the El Callao?

A. We got up very early that morning. It seemed to be very quiet in the city, and we always had been in the habit of hearing—

Mr. COUDERT: No matter about your habits.

Q. State what you noticed?

A. I will be better satisfied. Capt. Wetherell sent up to the house—

Objected to as to what passed between the witness and Capt. Wetherell.

Ans. (continued). —and told us to come on board the steamer.

Mr. COUDERT: All the charges made against General Hernandez relate to conduct on his part, real or alleged, that commenced on the 13th day of August. Anything that occurred on that day or after that day with which he was connected is of course admissible. There is no pretense that General Hernandez was in control of the city until the 13th, and for that reason that date was taken, and in the complaint it is stated on the 13th day of August he imprisoned the plaintiff in his own house.

The COURT: Why do you give it the 11th and allege the 13th?

Mr. CLARK: We shall offer evidence to connect the occurrences of the 11th, the mob and so on, with Hernandez and I am leading up to that

The COURT: Your complaint is that the defendant imprisoned the plaintiff from the 13th of August forward.

Mr. CLARK: And assaulted and beat him. Does your honor think every action in the testimony must be between those two days—every act of assault and battery and every act of false imprisonment.

Q. What occurred on the 11th of August with reference to the mob?

70 Objected to.

The COURT: I am inclined to exclude that because you do not ask anything about the defendant, and it was two days before.

Q. Do you know where Hernandez was at that time, on the 11th of August?

A. I wasn't there, but it was definitely known he was about seven

or eight miles from the city of Bolivar. But his men were going in and out constantly; his couriers were going back and forth even on the morning of the 10th.

Q. Was there anything to connect Hernandez with the mob on the 11th?

Objected to as calling for a conclusion of law.

Mr. COUDERT: Don't answer.

A. Yes, sir.

By Mr. COUDERT:

Q. Didn't you understand me to say not to answer?

A. I beg your pardon. I wasn't looking at you; I was only paying attention to Mr. Clark.

By Mr. CLARK:

Q. State the facts with regard to the mob and all the facts that you know connecting Hernandez with it?

The same objection; also as being irrelevant and immaterial, and contrary to the statements in the complaint, and as not connected with the defendant in any way.

The COURT: He may answer first as to the part that connects the defendant with it and leave out the part that does not.

Q. State the facts with regard to the defendant's connection with the mob of the 11th?

Objected to on the grounds already stated—that the charge is not of any assault or any wrong done by General Hernandez prior to the 13th of August; that it is admitted that he only entered the city on the 13th of August, that is two days after this alleged assault by the mob, and that no foundation is laid for this question.

The COURT: We will confine it to the 13th and after.

Mr. COUDERT: To that I make no objection.

Mr. CLARK: We except. Do I understand your honor to rule out all testimony with reference to what happened on the 11th or 12th?

The COURT: Until we see it has some connection with what happened the 13th and after.

Mr. CLARK: We except.

The witness continues: The defendant came into Bolivar on the 13th of August; I saw him; I saw him coming at the head of the army—what there was left of Carrera's army—a few stragglers and these Italians and Corsicans that belonged to his party before. They seemed to have on new clothes, with bands on their hats, new hats with bands on them, with the words "El legalista" printed on; white muslin bands with "Vive Hernandez" and "El legalista," "Down with the government," all such things. "El legislata" means "We are the law" and "Hurrah for the law," "We are the

law," and "Down with the government." I saw this myself. Hernandez was at the head of the forces; every one was taking off their hats to him. He was the great mogul at that time. He wore rags a few days before that. On Sunday, the 14th of August, the defendant sent about six or eight gentleman there to my house, demanding me to come to his office, to his commandancia, as they call it, to go with him and examine the steamer Socorro, which the government people had disabled, I suppose, before they cleared out; the same as these people had humbugged the Nutrias and Apure for the government, you see, the same kind of treatment. The government people had gone and left the town. Fifty or sixty of them escaped on the British steamer El Callao. When the committee came to my house I was rather surprised to think they were

72 coming for me to go and look at the Socorro after blaming me and keeping me in jail for fixing the other. I agreed to go with them, and I went. I stopped at the place and saw the defendant, and went with him down on board the steamer, together with all these gentlemen. I knew the bigger part of them. Something was said between myself and the defendant of my desire to leave the town. I told him the condition, that my wife had been here so long and the house was entirely in the hands of servants—the house in Trinidad; that she had come up here to see me (hadn't had any letters or communications), and I would like to go on the first steamer to Trinidad. He said, "That is the question now, the fixing of this vessel. The question is the repairing the Socorro." He said I couldn't go away now; I must come on board the boat. So I went on board the boat with him, and after examining the engines I found—the boat, by the way, lay about 150 feet in front of the hotel I had been arrested and put into, and that day they took me on board to fix it. I found they had taken away the valve motion of both engines, horizontal; they had taken away the links, sliding block and all those different parts, and I suppose thrown them overboard, and I saw it was a question of a week or ten days to do the work, because you couldn't get—drawings had got to be made, and I told him I couldn't fix it. Of course they said, "You are going to fix it because you fixed the other one and helped disable this, I suppose; can't you fix it with hard-wood, and so forth?" And I told him no; no hard-wood could make this stand. He understood the hard-wood was very strong, and I could fix it if I wanted to fix it. I told him it was out of the question; it couldn't be fixed except with iron and steel, and even then I hadn't a foundry where I could make castings and the brasses, and it was a question of a week or two. He said, "Will you fix it for us?" Of course they were all around there, hundreds of them, watching me; went down with an armed guard; so I told him yes, sir, I would agree to fix it on the same condition I did for the government people. "Let the board of directors give me a written order and I 73 will agree to fix it, and I will fix this for a thousand p<sup>s</sup> sos apiece as I did the other job." They agreed to it and I went home, and they promised to send me the order, instructions from this company. I went home, and that Sunday I laid it down full

size on my cement floor. Then I took it off, traced it off on brown paper in pencil, marking each one, &c., and gave them to Mr. Manuel Grillet to take them to him, and General Hernandez accepted them, and nothing more was said about it. The next day the Nutrias that I had fixed and that had gone off with different troops came back, and those pieces were found on board. Of course the nigger engineers had no other place to go to, and they all came home like rats, and we found the pieces that belonged to the Socorro, and that ended my connection with that steamer.

Q. Now, on Monday, the 15th, was there anything happened?

A. That is the next day.

Q. With reference to your finding soldiers around your house?

A. Yes, sir.

During this time we could't get any grass for our animals, nor any firewood. It had been a very difficult matter to get that during the time the government was there, but still I got it by paying about four times as much as it was worth. But this morning I went out of the back gate looking for some grassman I might hail to get grass, or woodman with a donkey-load of wood, so many sticks for five cents. I saw a lot of fellows lying around the gate with muskets, soldiers with blankets strung across them, and some had old muskets and rifles and sabers. I knew two or three of them. They had been with the government before. Everybody had bands on their hats, "El legalista." That meant, "The law here, the law here." "El legalista" meant "The law," as near as I understand. These men were soldiers of Hernandez. As I was going to the corner to hail a man—that was only a short distance, as far as from this window to the corner, out of my back gate—they ran after me and called to

me, and told me I couldn't go any further. I asked the reason

74 why. They said it was the order of the muncho. They meant General Hernandez. It was a nickname he went by there. I think they had some reason to call him that, because he was maimed in some way; lost his hands or fingers, perhaps, in battle before this. Probably his right hand had been shot off, or perhaps caught in a sausage machine; I don't know. I didn't hear it had been lost in battle. I don't know why it was lost. I don't know that it is lost. With regard to these soldiers this morning at the gate, they told me it was General Hernandez's orders that I couldn't go out, but the servants could, and they pushed me back. Of course, two or three of them I had known in the old government as government soldiers. They turn from one to the other, just according to who is general; and I went back in the gate, and I knew from that time I was a prisoner in my own house. After that there were soldiers kept around the house day and night. They were constantly going and coming all the time, around and at my doors, and sitting on the steps and under my windows. General Hernandez passed there himself pretty much every day. He went out on horseback to the cuartel, some distance from there. After that time, from August 15th until October 18th, two months later, I left that house only two or three times. I didn't go out during that time more than that, because I knew I was a prisoner, not only from

hearsay; every one told me that, you know. Also he had made demands on me for different things during that time. He demanded my house for the Winchestermen, what he called the Sacred Order of Winchestermen. Nothing was said as to what I should do when I left my house. I suppose I could go hire one. Nothing was ever said; and he demanded of me to fix his rifles, Winchesters; and he demanded my animal and cart about the 16th of that same month. Demanded my cart and mule to carry ammunition or something up from the boat. I refused the animal, because I hadn't been using it myself. She had been sick for two or three months. The first time I left the house after the 15th of August was, I think,

about the 11th or 12th of September. The occasion was to go  
75 to his place and ask him for leave to go. I had sent for the

passport to leave on every steamer. Two or three had been there, constantly had been there. Half a dozen had been there to see him. He had refused me. I went myself. I did not know what it meant. I was going to fall down with all this woriment. I was feeling miserable and I went there about the 11th or 12th of September to his house to ask him to allow me to go on the first steamer. After keeping me waiting for three-quarters of an hour, he came out and I explained my business to him and he told me I couldn't leave; that I was in Venezuela now, and I was the servant of the people and he expected in a few days the water would be down sufficiently for me to commence pumping, and he wanted water for the troops. This was either the 11th or 12th of September, I don't know exactly. I do not confine myself exactly to the day, but I know of the mob and certain other dates that are imbedded in my memory. With respect to the guards around my house, I was followed down to the commandancia and they followed me back and asked where I was going when I came out of the door. I told them I was going to see the General. With respect to the cannon, it was about the 27th—26th or 27th of September—they placed the only cannon that they had at that time, which was a brass howitzer, probably about 5-inch bore—I mean it was August 27th. About two weeks after I was first confined, we heard them thump, thump, going through their maneuver, and peeked out. Didn't know what to make of it. We knew the noise, because on feast days they generally had it out on the square getting ready to fire blank cartridges. When we found out they were loading this cannon (which we could see distinctly under our shutters, not any farther than from here to where you are), of course we rushed out of that place immediately. We didn't know but what they were going to fire it off. The cannon remained there with three others until the day I left. The first cannon was pointed at our door.

76 The others pointed between the doors and windows and all pointed in that direction—pointing right towards the house.

The cannons were brought there by the different boats that came in. They had only one in the beginning. That belonged to the old government and was made here in New York. I was taken sick during this period—I guess as near to brain fever as anything else. I was sick in bed. I was taken sick after the 15th—after

going to him and asking him to go away from there in September. I was taken down sick then and had to get up to write him a letter. He wrote me on the 23d of September, demanding me to run the water works in eight days. He gave me eight days to do it in. I was sick in bed from the 16th of that month, I think. I remained sick in bed, I guess three weeks more or less. I have been told that I was out of my head some of the time. My head seemed to be about four times as big as it is now. When I was confined in this house, I felt that my life was in danger. One of the defendant's own generals came to me and told me that my life was in danger, not to go near the windows and doors. One of his own men. There was firing of musketry towards the house all the while. I could hear them. You know what the sound of a rifle going off is and the hitting of a bullet against walls. They all sat right opposite my house, opposite my stoops and they were shouting at the flag and said all manner of things against me, called me all sorts of names, as Yankee, and so forth. After that I saw the defendant himself with reference to letting me go. It was on the same steamer that came into port and brought us up letters. It was in September, just before I was taken sick. I saw him again after my sickness. I asked him to go, certainly. He said he couldn't leave the country. He wanted me to leave somebody there, to go to the merchants and get a bond from some responsible merchant that I would return again to the city and run the water works. I said, "I can't go and ask such a foolish thing, that won't do any good. My stock amounts to ten thousand dollars, I will relieve you;" and I offered this Harold, whom I had educated, to run it. I told

him I had no intention of giving up the business, most as  
77 surely, although I had been negotiating with the government before this revolution to sell to them, as they were going to make it a present to the city of Bolivar, the general government. The defendant refused this young man. He said he didn't want no boys. I said, The man is twenty-one or twenty-two years old; he is able to do it; I am only necessary to make out my water receipts and make my collections; that is the only difficult matter I have ever found to run the water works, to collect the rents. He said I couldn't go. I was the servant of the people and was in Venezuela now, and he wanted me to stay there, but if I would fix the steamer—that was another steamer, that I would prove I was with them. Mrs. Underhill was with me up to some time in October. I think she finally got permission to go away on a steamboat running from there the 2d or 3d of October, but she wasn't allowed to leave, either, up to that time. The excuse was, ladies couldn't go, &c., but other people went. Mrs. Underhill had hardly got out of sight before they commenced to come there, making demands on me with reference to the water works. The defendant had written me a letter on the 23d of September—General Hernandez—and I was sick at the time and got up out of my sick-bed to answer him. He had written me a letter. I have the letter. Mr. Clark has it. I answered it the next day. With reference to the water works, in order to state what happened I have got to tell what he wanted me

to do. He gave me eight days to clean it up, &c., and go to work pumping. The letter now shown me is the letter I refer to.

Counsel for the defendant, Mr. Coudert, offers the letter in evidence. It is marked Defendant's Exhibit A, March 27, 1894.

78 The letter translated into English reads as follows:

UNITED STATES OF VENEZUELA, {  
State of Bolivar. }

No. 278.

29° y 34°

CIUDAD BOLIVAR, 23d Sept., 1892.

Citizen George F. Underhill, present:

As the cause for having stopped the operation of the aqueduct, in July last no longer exists, I beg to call your serious attention, in your capacity as contractor for this important service, to the performance of the duties for which you contracted with the government and the public. To this end you are notified and allowed eight days, counting from today, to put the machinery in operation. It is understood that the boiler has been dry for more than ten days, during which you had ample time to make the necessary repairs and not deprive the public any longer of such an indispensable element. I submit this for your information and consequent action.

DIOS Y FEDERACION.  
(Signed) JOSE MANUEL HERNANDEZ.

The witness continues:

No. 278 is the number of the letter.

It is admitted that the stamp on the letter is the official stamp of the jefe civil.

This stamp reads as follows: "Office of civil and military chief of the Guayana section, Territory of the Delta, river districts north of the Orinoco." This blue stamp on this exhibit was the stamp that they took. Of course it was the same as the government had used on all their papers. Prior to the time Hernandez came in, Carrera had a similar one, you know. I do not know whether it was just the same. He was the military delegate of the government. They

79 did the same thing of course after he cleared out. This statement in the letter, "the cause for having stopped the operation of the aqueduct in July last no longer exists," was not true on the 23d of September, 1892. In the first place, there was about 30 inches deposit of mud over the floors and the water was up to the pump-house doorsill and the outside pump was covered with water, and the difference in the level of the pump-house floor and that foundation was about 4 feet 6 inches. I know this of my own knowledge for I went down there.

Q. I thought you were in prison all this time?

A. I was. I was followed with soldiers down there. I went to the defendant's house to ask leave to go. He wouldn't let me go. Supposing that there was no mud at all there. I could have started

up if there hadn't been any obstacle in the way, about the day that Mrs. Underhill left and went on board the ship, because it was reported to me then that the water was half way down on the outside pump, but the mud was still there. About 30 inches of mud. To have cleared up these works from the mud and the other damage there so that pumping could be resumed, it would have taken probably about two months or two months and a half, but had the river been falling and cleaning at the same time, I could have done it quicker because it would have gone with it as it went down the current. But after being left there—and all the damage the Nutrias did running into my tanks and all sorts of conditions in this time—of course it gave me more work to do, besides the pilfering of my valves and everything in the shape of brass they could take. Even if Mr. Hernandez had been in a position to order me to start up the works, eight days would not have been a reasonable time from the 23d of September. It would have been out of the question. I could not have done it in less than two months and it would have taken longer.

Q. Is this statement true in that letter: "It is understood that the boiler has been dry for more than ten days;" that was on September 23d, 1892?

A. Well, one of the boilers.

Q. How about the other?

80 —. Oh, the other one was—you can imagine how dry it was when it was a brick-set boiler.

Q. Was it dry?

A. The iron-work was, but the bricks was pretty well soaked, what was left of them; they had stolen the biggest part of the fire-bricks out of there, skinned it out pretty well. A demand was made upon me from the defendant that I sell the water works. He sent the government lawyer there, Dr. Brigado Natera. First off he sent a man by the name of George Mathison with a letter of Brigado Natera, which you have. He sent this gentleman there with this letter. He spoke good English. The defendant had a conversation with me with reference to these water works. He stated that he wanted me to leave somebody there to run it, if I went away, for one thing. The defendant finally let me go from Bolivar on the 18th day of October. I laid all these facts before the United States consul at Trinidad.

Cross-examination by counsel for defendant:

I believe that those four cannon were put there to threaten me. I was told so. They did it to annoy me, sir. I don't know what to believe with respect to those people at all.

Paper is shown to witness and after examining it, he says:

The house marked in the middle "Underhill," represents my house, I guess. That would compare with my plan. The part marked "I" is a hospital. I built it myself. It was built for a hospital but taken possession of, part of it, all except the chapel. There were some twenty-five or thirty soldiers kept there after Car-

rrera got in power, and before Hernandez went there. The cannon were nearer my house than they are on this plan. The men sat on my stoop. I see five cannon in the plan. I only saw four actually. They were pointed there (indicating). They were pointed at a window, pointed there at the corner. The first was put so that there was hardly room to pass. They made them go around the cannon

81      Mr. COUDERT: Mr. Underhill says the cannon were nearer his house than the barracks.

The witness continues:

They were between the barracks and my house. When the defendant took possession, he made barracks there. There were barracks there before. There hadn't always been barracks there since I was there. There have been barracks since this last war, 1891 and 1892. They were merely temporary barracks, you know, "A" was the State college; "B" was the Plaza Bolivar, Bolivar square; "C" was the Government house. I don't know whether "D" was the Winchester barracks. There were just as many Winchester men over here opposite my house. I don't know whether "D" was a military barracks; that is a private house. It is very possible, "E" was an infantry barracks before General Hernandez was there, where the infantry were, and "F" was the Commandancia de Armas. With respect to "G," all those were four private houses. They were used as barracks before the general came in. "I" was the barracks of infantry and artillery which I have already spoken of as being a hospital before it was a barracks. I never saw any cannon there before. The diagram says "artillery." I never saw the cannon in that building. The diagram calls it "cuartel," which means there was infantry and artillery there. I never saw the artillery there. These were there before General Hernandez went there. Before he went there, all these places were full of barracks. It wasn't only after I came there for the purpose of frightening me. I knew these soldiers before. They are like cattle and follow a leader wherever he went—I know they live on a handful of corn. He is a brave man, General Hernandez, I can say that for him—all except these Corsicans and Italians, they were his staunch, true men, who stuck to him in this thing. The house I lived in did not belong to the government. It belonged to the municipality. It was given to me by the contract. It was mine until the expiration

82      of the contract. I hire a house in Brooklyn now. I do not call it mine because I have a lease but that was mine in the contract until the contract was annulled. They made a deed of it to me—an actual deed of the house until the expiration of the term of the contract. There was nothing but the walls to it and I put the roof to it and floors and windows and doors. This place marked "O" is not where the tanks were. That was a part of the property. It was about 175 feet square. There was a little Trinidad tank there, mounted up as a bath tank, that would hold about 200 gallons. Here is a window and door where I told you these cannon were. To the right of that door about ten feet was

mounted a little tank four feet square. In other words, one of the tanks from Triuidad cut in half to hold sufficient water for baths in my house. All that part marked "tanks," was not devoted to public use at all. The tank in there which was built for the water works was never used at all. Although it was in my contract to build a tank it wasn't used. I built it inside of there. It was built for a tank. That is the one 80 feet in diameter—a great big tank. There was never any water in it except when I pumped it in and after that we never used it two weeks. The part built for tanks was not on the part marked "O." It was over that line about 7 feet. I should call it on the side of my house. As to this part here marked "door," the space there from one road to the other was about 175 feet. There were no doors and windows except on that corner only. My exit and entrance were by an arched door. The windows were along here in front. That (indicating) is the rear opening into the yard. That (indicating) is the gate I went out of when they drove me back and told me I was a prisoner. These 170 feet were without doors and windows except on that corner there was a door and window. The cannon I speak of were directed against that part of the house which had simply one door and one window; right at that corner of the house. The cannon were pointed at the door and window. This was built of stone. The cannon were right up close on that corner. There were no cannon in front of my house.

83 Q. There was a jail in the place, wasn't there, and they never locked you up in that jail—Gen. Hernandez and his people?

A. His people—

Q. I wish you to understand that in all these questions that I ask you I only refer to the 13th of August and the days subsequent to that, from the time that you alleged that you were imprisoned by Gen. Hernandez you never were imprisoned in any place except your house. Is that the fact?

A. I didn't know. They said they had orders of Gen. Hernandez to put me there. That is the reason I went to jail.

Q. I am asking about the 13th and thereafter. You never were imprisoned after that except such imprisonment as consisted in confining you to your own house. Is that true?

A. That is true, but I was threatened.

Witness continues:

Gen. Hernandez and his people were rebels against the then existing government. The regular and legitimate government was the government to which they were opposed. They were considered rebels the same as we consider the rebels in our war. The other people, the Palacio people, were in possession of the government. General Hernandez and his people were violating the law of the government then existing. I knew so at the time. I did not show my sympathies with the Palacio government. Some of my men did and went to the war. My book-keeper did and my collector. I did not send them there. I know it was charged against me that

I had sympathized with the Palacio government. I am quite sure that this was not the general belief in that community. It may be that Hernandez's people believed it. I suppose they must have thought so because I helped in fixing this steamer, the Nutrias.

Q. And you tried to get off on the same boat in which the defeated government officers escaped, didn't you?

A. Well, I wasn't—my intention wasn't of going on her because I hadn't engaged passage on her, but when I got down there and saw that mob I was determined to go if possible.

84 Q. You haven't answered me yet. I will make it more simple. The Callao you have spoken of as being in port, and you have said that the officials escaped, all of them, there was no authority left, was there?

A. Nothing.

So far as I know, not a man—chaos and anarchy. I expected to get redress, if I was wronged, from Hernandez when he came in. He took forcible possession, and when he took possession I went to him and addressed him as the civil and military authority. I had that respect for him and couldn't do otherwise. The Callao was an English ship that came into port and carried off all these defeated men and couldn't do otherwise. They took possession of her. I tried to get away with Mrs. Underhill on the same boat. There were two parties to this revolution—the Palacio people and the Crespo people—as far as I know. I was in the country at that time and had lived there many years, but merely heard that. I paid for the newspapers but did not read them. I didn't say I had seen these things in the newspapers. I didn't know of it until I got to Trinidad. One party was the Palacio party, which I understood represented the law, "legislata," and the other the Crespo party, of which General Hernandez was one, which represented the rebels' party. There was a revolution throughout the country. Crespo was trying to get possession of the country, although I don't know as he was the head. He was one of the heads. There were two or three trying to get there. He was the one that succeeded. I believe the fight was between the government and Crespo, really. Crespo was finally recognized by the United States as representing the authority, in October. The revolution had lasted way back from the summer. I do not know the ground of the revolution and why General Hernandez, Crespo and the rest of them called themselves legalists or representatives of the law. I produced in evidence here the constitution of Venezuela. I have read parts of it, most particularly relating to mining codes, etc.

85 I know that others took the place of General Palacio after he left the country. I heard that his term of office under the constitution expired in February, 1892. I think so. I don't know that Pallacio refused to leave office after his term expired. There was never a president of Venezuela but fought for office after his term expired. I didn't understand that General Palacio's term expired in February under the constitution and that notwithstanding he refused to make way for his successor; I knew he was the existing president and that was the government. I

didn't know that General Palacio's term expired in February, 1892. I heard so, but that was only hearsay. I don't know whether or not congress declared him to be a usurper when he remained in office after his term. We couldn't get any communication there by newspaper. I do not know whether congress did it or not. I do not know whether congress levied war against Pallacio by right of its authority under the constitution only from reports there. I do not know from this constitution that congress had the power to levy that war.

Q. Did you ever read anything about the congress in the constitution?

A. Some. I never was much posted. My business ran in an entirely different direction from that of a lawyer.

Q. No matter about your business. Let me come *come* back to your expression. You talked about rebels and your counsel has talked of adventurers. When you called General Hernandez a rebel did you know that Pallacio's term of office had expired under the constitution, that congress had declared war against him and that all good citizens were called upon to drive him out; did you know that?

A. Yes, but—

Q. You have answered it.

A. I only know that others had been appointed by the government to take his place.

The COURT: Stop right there. You will have an opportunity, and your counsel, to re-examine you on any explanation, so you need not be afraid you will not have a chance to explain, be-  
86 cause you will, but just now answer the inquiry and leave it to be explained afterward.

Q. (Question read to the witness.) When you called General Hernandez a rebel did you know that Pallacio's term of office had expired under the constitution, that congress had declared war against him and that all good citizens were called upon to drive him out; did you know that?

A. No.

Q. Do you wish to change that?

A. No, sir; if I am to say yes or no I will stick to that. I said no, and I can explain why I said no if you want an explanation.

Q. I don't want an explanation. You have answered me yes, and after some interruption you answered me no; which is true?

A. In my answer I said "yes," but you see—

Q. You can answer, as the learned judge told you.

A. I didn't mean to say yes, I knew it.

Q. That was the general notoriety, wasn't it?

A. It was. I stated that Crespo and Hernandez with him were the rebels. I would call them rebels as long as they were working against the government and even supposing there was no government, that Pallacio's term had expired, Pallacio left others there to represent him. I do not know anything about the laws where you

come to go into it in Venezuela. I know only what happened in Venezuela for years and years.

Q. As the learned judge warned you often enough to answer I want to come back. You have called this man and others adventurers and rebels; I want to know upon what you founded that, and I ask you again if it be the fact that if you had known that General Palacio's term of office under his oath under the constitution had expired, that congress had call'd on him to give up his office and he had refused, that congress in pursuance of its authority under the constitution had declared war against him and called upon General Hernandez, Crespo and the rest, to oppose him would you still call them rebels?

A. I wouldn't. But congress didn't call them.

87 Q. Then you know congress didn't; do you mean to say that?

A. I mean to say that Crespo was the man working against the government, and not this man until long, long afterwards. From hear-say, I know that congress called upon Crespo. I didn't believe it. They had no right to do such a thing. I never mixed up with polities. It was impossible to find out. I called him a rebel because he was rebelling against the government. The Pallacio and Polido government and all those governments that held Caracas until he arrived there. They told me that congress was against Pallacio. Congress can put any man there. The president is the head man. I think Polido was the last president. He had charge of everything. I don't know whether he was regularly elected president. I only know from what I see in the papers. I read the papers. I read the Herald when I could see it. I knew nothing about this until I got in Trinidad. When I was down in that place I knew the government had everything and everybody that rebelled against the government was a rebel. General Crespo rebelled against the government. Congress has something to do with it, certainly, but the president has more to do with it. I call persons rebels as long as they rebel against the government that is in power. If congress had levied war against Pallacio, and Crespo was acting according to the laws of congress, I should still call him a rebel. Ciudad Bolivar was not my residence at this time. It was in Trinidad. I think the amount of receipts I got from Trinidad prove that. I resided in Bolivar in 1892. I resided there because I was obliged to. That is the only reason. I made affidavits and had General Hernandez arrested. With respect to this statement in my affidavit "that in the month of August, 1892, and for several years prior thereto the plaintiff resided with his family at Ciudad Bolivar, in the Republic of Venezuela, South America; that he was engaged in business there" I would say, I lived there all along up to the time I hired this house in Trinidad in February, 1892. In August, 1892, and for several years

88 prior thereto I had that house there at Ciudad Bolivar. Can't a man go and come? You can have a summer-house. This affidavit was made in November, 1893. I was obliged to be there on and off to look after the business. I resided there not

altogether with my family. I don't think it is mentioned in that affidavit that I resided in Trinidad. Ciudad Bolivar is the place where this assault occurred. I did not consider that I resided there because it was more convenient. I had both residences. I had two residences with my family. I had taken that place down in Trinidad. I am not allowed, I believe, to say anything more than yes or no. I can explain why I took that residence in Trinidad. In August, 1892, I was obliged to reside at Ciudad Bolivar. I was engaged in business there until I got so far advanced in that business I could leave it in charge of some one else.

Q. Let us come to the 13th day of August. As I understood you, prior to the entrance of General Hernandez into that city there was anarchy there, no governing power, no judge, no laws, no prefect, nobody to insure order?

A. Yes, there was.

Q. You told me there was not.

A. How could I be arrested then under a printed document of the government, which they used from the prefects?

Q. The only proof that there was a legal government is that you were arrested, is that what you mean?

A. I have got the printed papers that they used there, where they use the prefect's stamp and everything—that is all I know and his own name was among the parties.

Q. Try to recall what you said a moment ago. I used those very words—I asked you whether when all these men left, who left on the El Callao, intermediate that time and the arrival of General Hernandez, it wasn't a fact that all the civil and military authorities had gone and there was chaos and anarchy in the city, and I understood you to say, yes, it was so. Do you wish to correct it?

A. They immediately took possession and let the prisoners out of jail.

89 Q. Am I right in reciting your testimony in that way?

A. For that moment.

Q. How long did that moment last?

A. That moment lasted until the time I was mobbed—to between seven and eight o'clock on the 11th of August, in the morning.

Witness continues:

On the 11th of August there was a government of some kind there, because I was served with these papers on that day. As to the 10th of August, I didn't know because that happened in the night-time. I don't think there was any government that night; that night or perhaps early in the morning of the 11th of August. There was a time when they were all gone, intervening between the time these people had escaped on board the steamer until the time I was about to embark, between seven and eight o'clock in the morning; and I was alone. They had already got on board the boat during the night and early in the morning. That is the time they took possession. There were authorities between the time when the regular authorities escaped and the 13th of August when General Hernandez came in. They called themselves the provis-

ional government; made up of his officers, men who were in the field with him. I think there might have been half an hour or so—it might have been less time—between the taking possession by General Hernandez of his officers and the running away of these other officials, when there was no one there to protect order. When General Hernandez came in, he assumed command. He assumed all government authority therein. As far as I know, he was the only constituted authority in the place and he was not constituted. General Hernandez never personally struck me. I couldn't say he always treated me with courtesy. He never came to blows with me. He never touched me—only his men did, that is all. They handled me pretty roughly. I do not believe he instructed his men to strike me. I do not truly think he instructed his

men to do that. After my arrest, the only imprisonment I suffered was in my own house. Referring to this letter of September 23, 1892, written by General Jose Manuel Hernandez to me, I answered it in writing. Referring to this letter, I understood that he supposed that the waters had begun to fall so that the aqueduct could work. He gave me eight days. He understood that the boiler had been dry for more than ten days. He gave me eight days. There were two boilers. The inside of one might have been dry but it was covered with felt on the outside and that was certainly damp. If his supposition had been right, a week or ten days would not have been ample time to proceed with the work, leaving out of question the mud. I could have commenced operations on the 2d of October. This was nine or ten days from the 23rd of September. It is not true that he was not wrong by about two days. I could have commenced to take out the mud and clean it up, but it would be a question of about two months. I didn't commence, I didn't notify him that I wouldn't commence at any time, not exactly in those words. The answer is in writing. I didn't tell him verbally I wouldn't commence at all. I told him verbally I would leave people there to clean it up. I did not tell him verbally I wouldn't commence. I was willing to do it.

Q. You were willing to do it through other people?

A. Did you expect me to go there and shovel the dirt and clean the place up myself?

The letter now shown me is the letter I handed to General Hernandez in answer to his demand. There were no other water works in the city. These were the only ones. If those were cut off and stopped, the people would have to resort to the old style of getting water by tanks.

The letter is offered in evidence by defendant's counsel and is marked Exhibit C.

This letter reads as follows:

91

"CD. BOLIVAR, Sept. 24th, 1893.

Senor Jose Manuel Hernandez, civil and military chief.

DEAR SIR: I have the honor to acknowledge the receipt of your official note, No. 278, dated 23rd inst., in which you are pleased to

inform me of the importance of putting the aqueduct in order (the inundation having passed) and to continue the supply of water to this city according to contract with the government. You further allow me eight days in which to complete the repairs, and commence operations of pumping. In reply I have the honor to say during the number of years I have directed the enterprise of the aqueduct of this city, I have managed and extended it through the greatest amount of difficulties, and without any financial success to myself. The government never fulfilled one article of their part of the contract. Yet they were always promising to improve the Reglamento and to protect me in the way of non-paying subscribers, &c., &c. But the officials, or community, at that time never insulted me, or threatened to take my life, and my patient endurance and hopefulness have buoyed me on to the present year. On the 14th of July, when I was obliged to cease pumping, it was my intention to start up again as soon as the works had become dry. But since the occurrence of the 11th day of August, and the insults I have received, and your refusal to give me a passport on any steamer that has sailed from this port during this term of six weeks, I have come to the following decisive conclusion pertaining to the aqueduct: I shall never run the aqueduct for the city of Bolivar again.

I left the works in perfect order on the 14th day of July, and so they can be found today, unless made otherwise by malicious hands

If it is your right to take possession of that business, you must know, and can act accordingly. All buildings outside of the 92 pump-house is my private property. My stock and tools contained in the office building is also my private property.

I have the honor to be, very respectfully yours,  
GEO. F. UNDERHILL."

This letter is to the defendant, the rebel.

Q. Were the statements as to your reason for not going on true, in here?

A. Not going on, true? But we had had conversations—

Q. Were these statements true?

A. I never intended to run it again.

Q. And you gave him notice emphatically you never would run it again?

A. I calculated this wasn't the government; my contract was with the government.

Q. In this answer to General Hernandez you profess to give reasons for which you declare your determination never to run the aqueduct again; were those reasons true?

A. I didn't expect, the condition I felt in, I would ever be able to do much again.

Q. You haven't answered that. I haven't asked *asked* about your health.

A. That is the truth. I couldn't do any more. I was going to put others there to do it. I done it for ten years.

I went to his office to tell him. I got up from a sick bed to answer that. Even then, they misconstrued it and held me there

to a court-martial for writing that letter and saying I was insulted. The reasons I gave for expressing the determination not to run the water works again were true. I had been insulted. I didn't say to him that he didn't give me enough time. What right had I to expect this man when the government was in power—what right had he to demand it of me? He was in power, in forcible possession. I addressed him as "chief and military authority" because his letter came there so stamped. I didn't give him the reason I have just given to the jury as to never running the aqueduct again because I didn't consider it any of his business. I supposed that would be enough at that time. I had had a talk with him about it before. I do mean it wasn't his business. I think that  
93 man had no right to write me a letter making demands on me. I didn't dare tell him it was none of his business. I knew that would mean the jail in 20 minutes afterwards. I didn't intend to run the water works again. I meant I never would run the water works again. I didn't tell him any more on paper I was going to run it. I told him I wouldn't run it. I didn't give him the reasons that I gave a moment ago to the jury because I feared him. Those were not better reasons than this. I had asked him for six weeks for leave to go away and five or six different ones had asked him and he insulted me when I went there and told me I was—all sorts of names. He told everybody he was going to break the contract with me. That is not the reason I wrote him this way. I didn't mean to run it again. I didn't tell him that I wouldn't run it because it would take two months to do it and that he hadn't allowed me time to do it because I had already told him about the Nutrias running into my building and smashing all things out of shape. He wasn't willing to pay me one cent for it. We talked about fixing up the water works before this letter was written. I talked about being insulted before. I don't know why I told him one thing I talked about and not the other. I couldn't put too much on paper. I didn't mean to run it. By "grand mogul," I mean the defendant was looked up to by the people as being their savior, as the only one man in town in power. Crespo at the time wasn't thought of. It was in everybody's mouth, "Vive Hernandez," and placards all over the streets describing him as the great benefactor and savior, and all that sort of thing. I merely made that remark the same as we say it here. He was the only one to be looked at. The feeling of the people seemed to be that his fame was so great as to even overshadow Crespo's. I had heard of Crespo. I knew that Crespo was one of the heads of the revolution. He was one and his brother and several others. He was the head of the revolution. Those who served the revolution called themselves  
94 the law, I believe. They called themselves the law-abiding people, and those people who called themselves by that name were the followers of Crespo as distinguished from those who followed Pallacio. This revolution had been going on all over Venezuela before that. When congress tried to get together and appoint—but congress never could get together to decide on anything for the presidency, and part of them split up and made the

revolution and got Crespo to try to overthrow the government. That is about it. I know they were trying to get the congressmen and senators together and to form another government and to have a new president. I don't know whether Pallacio, the president, was out of office by virtue of his term having expired, only from hearsay. I heard they were trying to convene, to get together the different congressmen to elect a new president. A great many were for electing Pallacio, others for —. I only know the cause of the revolution from hearsay. There were half a dozen candidates for office. I know Congress never got together. There wasn't enough of them there half the time. They were always fighting. There were three different factions: the Gordos and the Crespo party and the Pallacio party. That was for the election. They couldn't elect anybody. They couldn't agree. I am not sure whether Pallacio's term had expired. I think it was on the verge of expiring and before this they were trying to meet, congress was. Pallacio had been president about two years. In that country they claim to have the same laws we have. They don't go by ballot. The president, whoever it may be, is president from such and such date, and the prefect. I supposed the presidential term was two years, but there has never been a president served less than four, six or eight years. I don't know that by the terms of the constitution no president could serve more *more* than two years. I never knew that. This subject has never been brought before me before. I never had occasion to look into it. That is an affair of ministers. I have been a consul there, that is, in that country. I didn't hear that congress and the courts had proclaimed Pallacio a traitor. I didn't hear that congress had decreed him a traitor nor that 95 the courts had. They couldn't get congress together, couldn't get enough men together and half of them were niggers. I know congress didn't proclaim him a traitor.

Q. If I show you that they did proclaim him a traitor, then you will say that you were mistaken, will you not?

A. You can only show it to me from the paper reports, that is all.

I am not a Spanish scholar. I managed to make my deals with them. The paper shown me, purporting to be a proclamation of congress, was in March, 1892. I have never, never seen such a paper before, although I know of several men here who are friends of mine who were government people. I never saw this paper before. I never heard of this proclamation. I must explain one thing. Of course it may not benefit me in doing so, but you know that any government in power print their own newspapers. There is no other paper allowed to be printed. They are put in jail the same as this man did when he came in power. He did the same thing. This is not a newspaper, but it is printed by the department of public works, no doubt. I don't know it, but if it is printed in Trinidad it would be in English and this is Spanish. They do print papers in English in Trinidad. This paper shown me is not the official Gazette published in Caracas. I never saw it before or heard of it. I never was much posted on the diplomatic affairs of

the country. I know very little about the geography of the country. I know something about the district of Guayana by being there.

Q. That was a large district occupied by Hernandez around Bolivar, wasn't it?

A. After you left Bolivar you couldn't find a house for several miles—nothing but mines—and they were fifty miles apart, and then they were mud houses.

I know General Carrera of the government had authority there. The government was driven out from Bolivar. Carrera was in Bolivar. He didn't run away, he was killed, and if his people had

96 not run away they would be in Caracas today. Carrera was killed and the others took refuge—General Hernandez, after

these people were killed and dispersed, was the only authority in Bolivar. He took possession, forcible possession, of course. In

Guayana, through those forty or fifty miles, where there were no houses, there was other authority there. In the mining districts,

the government people had not escaped out of this part. That was the only part of the country he had taken. The only part of Venezuela that the rebels had taken possession of—that was the only section.

There certainly was other authority, civil or military, within fifty miles of Bolivar besides General Hernandez. The government was in possession all over except Bolivar. He had

beaten them at Buena Vista, about seven English miles from the city. They were in the city at the time. The prefect ran away. His jurisdiction extended over the city and the limits, of course.

The limits were just outside the city limits, maybe three or four miles. The custom-house had run away. I suppose the judges had all taken flight; great many of them turned over. I do not

know the names of persons who resisted Hernandez's power within thirty miles of Ciudad Bolivar after the battle of Buena Vista, but I know there were government officials all over the country, not

in the city. I do not know that Hernandez's army had overrun all that country, and had beaten the enemy at Buena Vista and was master of it. The government had beaten him, and when they

crossed the river if they let matters rest right there—Carrera and two or three others got over there and were killed. At Buena Vista he did beat. That was not the only army the government had in

that section of the country. Oh, no. The other army was across the river—probably a mile or so after crossing the river in Guayana. I don't know who commanded that army. They weren't on

this side at all. That was over in the State of Bermudez. It is only an hour's sail across the river. Although it is only five minutes between Brooklyn and New York, you call it New York all

97 the same. The battle of Buena Vista didn't drive out all the officials of Guayana, only in Bolivar. I don't know the

names of all the government officials who were left. I know I heard there were officials who were left. I know some got on

board the boat on the 18th of October when I came down there. After the battle of Buena Vista, when this general who commanded

Pallacio's forces was killed, there were some that were caught there that tried to resist, and he put them in jail. Guayana was the only

place in Venezuela where there was an organized force to resist General Hernandez openly, from the time of the battle of Buena Vista to the recognition by foreign governments of Crespo on the 16th of October, 1892.

General Hernandez did not refuse to give me a passport on account of my conduct, in some way or other with the aqueduct. He did refuse to give me a passport because of my connection with the aqueduct. The first time he refused to give me a passport in connection with the aqueduct was about the 14th or 15th of September. He wanted me to get bonds from some of the merchants that I would come back again on the next steamer. He said he heard that I was going to leave the country and abandon the works—abandon all my property there. He said if I would get one of the merchants to give a bond that I would return on the next steamer, he would let me go. I told him it was ridiculous for me to ask a merchant that when I had ten thousand dollars of stock in the place besides what the buildings had cost me. I certainly told him I did mean to come back, I would come back. This letter you show me was on the 23rd of September. His letter to me after that was the 23rd of September. I asked him in that interview if he would pay me for the reparation of damages that the Nutrias had caused by running into my building. That interview took place about the 14th of September. There was a steamer in and I wanted to leave. I went to him for a passport after he had refused others to let me have one. He told me he would not give me a passport unless I promised to come back and give bail to that effect. I told him I could not ask merchants such a foolish thing but I

98 agreed to leave my man there, which he thought was a boy and wasn't fit, although he had been running the business for two years. He said I was a servant of the people and had no business to leave and that he was going to hold me there and no American gunboat could take me away unless I gave bail. If I had given this bail to come back, he might have given me a passport, but I don't think he had a right to ask me that. Crespo hadn't reached Caracas yet and the government was surrounding the whole country, why should he have the audacity to ask me that? That was either the 14th or 15th. It might have been the 14th; I wouldn't swear, but I know there was a steamer in port and I had sent the doctor there and Mr. Gillet and three or four more. This was the first time the question of the aqueduct ever came up, but he kept me there six weeks previous to this. When this thing came before me again, my blood boils to think how I was outraged there, and I can't help but say something if I lose the case. That ends it. On some day, the 14th, 13th, or 15th, I had this conversation with General Hernandez in which I stated I would come back if he would let me go. I wanted to leave this man to clean up, you know—23 years old. I meant in good faith to return, most assuredly. When I came home on the 14th of September, I gave up all hopes of going, and then I was a sick man from that time. I wasn't feeling very well before. I thought there was sickness

coming on me and I must either get out or go mad. There wasn't hardly a day but they were demanding something.

Q. On the 14th day you told him you would come back and run the aqueduct and on the 24th you told him in consequence of the insults you had received on the 11th you never would run the aqueduct for the city of Boliver again. Is that true?

A. Please read that letter; I referred to other things besides that in the letter.

Q. I would read it with pleasure if the jury would like to hear it; it is one of the nicest pieces of literature in the case, but I can't take the time of the court. I simply want to know if any 99 event had occurred between the 14th and 14th which made you change your mind; that is, on the 24th you were willing and anxious to run it and on the 24th you declare in consequence of the insults you had received you never would run it again. Now I want to know what event had occurred in the meanwhile, if any, or if you had simply changed your mind?

A. I fell sick then, right off sick in bed; and every time they passed my house they were howling and yelling and abusing us in every manner; and this gentleman, who had been a friend of ours, even told us he told him not to come to the house, and so forth; and we couldn't get anything; we had to kill goats to live on.

I couldn't get away. I was taken down sick. That is the only explanation that I have to give for the difference in my promise in the one case and my threats in the other. I was thoroughly disgusted with the actions up to that date. He kept me there six weeks a prisoner and did not allow any of us to go. I believe he made some such remark for not allowing Mrs. Underhill to go to the effect that it wasn't safe to go alone, but he allowed other ladies to go. He would not allow me to go with her, or my boys or my servant or any one. So far as I know, he said it wasn't safe for ladies to go alone.

I said yesterday that after I had written that letter I was court-martialed. He came there to the house, the people came there and his judge came there. I don't remember using that word exactly that I was court-martialed. It might have been that I said "after I had written that letter I was submitted to a court-martial." It was in this way: I suppose that the men sent to my house on September 13th was a court-martial for the insult in that letter as he claimed. He charged me that I insulted him in my answer to his letter of the 23d of August. I was not called before any court. There was not any assemblage of men in uniform. I was sick in my bed when they came. I got up to sign some paper. They didn't take me out of my house. I saw officers who constituted 100 a court-martial—a judge there. I didn't see any military officers; they were just dressed in uniform there. I understand that in this country a court-martial is a court composed of military officers. A court-martial is not the same down there. By a court-martial I didn't mean a court of soldiers. I meant the court, the justice there, not a court of soldiers, although I was surrounded by soldiers all this time. The reason why I said court-

martialialed was because afterwards he published it in the newspapers which we afterwards had translated, and said I was court-martialialed. I called it a court-martial, but they were judges of the court whom he had named—never were judges before. Judges of a civil court, which he named. As to my having been tried, he claims that I was. They wanted me to sign a paper to exonerate him for any blame for what happened on the 11th of August, and I said yes. I was not tried before a jury. They merely took my statement. I suppose I gave evidence. They were determined to get in, and I had to let them in. It is not the truth that as soon as I wrote to General Hernandez, that I had been insulted and abused, as stated in the letter, he immediately ordered an investigation to find out who the guilty parties were.

The minister of the United States there at that time was Scruggs. Mr. Partridge took Mr. Scruggs' place. He was glad to get out of Caracas. Looking at the paper now shown me, I see the name Frank C. Partridge. I see the seal.

Q. Will you look at that and see whether that is the record of the case to which you allude, which you first called a court-martial, and which you next say was a proceeding in which you were examined as a witness?

A. It is in English?

Q. No, it is in Spanish. I have an English translation.

A. I would like to see the English translation.

Q. Will you look at that and see if that is the certified one? This is merely a translation which your counsel might object to.

A. This man Partridge was not minister at that time.

101 Mr. CLARK: Objected to. You cannot prove the paper that way.

Mr. COUDERT: I have not offered it in evidence yet.

The WITNESS: This is the minister's signature and seal authenticating the signature of this man who was in power in Caracas then, which was the Crespo government.

Q. Do you know Spanish enough to see whether that is a record of the proceeding? You can look at the beginning and the end.

A. This is a question of several hours; but I see here the name of the judge Guillermo Natera and his secretary Luis Aleale Sucre. Those are the names. They came to my house on the 30th—we will see whether it is the 30th of September.

There was no sentence against me that I ever heard of as a result of this. They were trying to get me to exonerate the defendant from the blame. He only states in his Trinidad papers that it was a court-martial. Here it is (pointing to papers), in the criminal court, they call it. I could not go to the court. Therefore, they demanded entrance to my house. They demanded my evidence as a witness.

Q. Did you have any participation whatever in this except as a witness, and, if so, what was it?

A. I knew if I didn't say—

Q. No matter what you know; I am asking you as a fact—did you have any participation whatever in this except as a witness?

A. That is all, but I know the paper I signed did not contain fifteen lines, while they have got a pamphlet.

By the COURT:

Q. What did you say to the question whether you had anything to do about it except as a witness?

A. Only to answer the questions; that was all.

Q. He asks whether you were examined as a witness?

A. I was examined, yes, sir.

Q. Then was this question put to you: "State your name, surname, age, condition, profession, nationality and residence?"

A. Yes, sir.

102 Q. To which you answered, "George F. Underhill, 47 years, married, North American, residence this city, engineer by profession?"

A. Yes, sir; I suppose that is the same.

Q. You swore you were a resident of Ciudad Bolivar?

A. My domicile was in Trinidad.

Q. Yesterday you said and your counsel said, you were a resident of Trinidad. Here you swear you were a resident of Ciudad Bolivar.

A. I believe Webster calls either one a resident or domicile. Domicile is where I have my home for any length of time. Bolivar was always my residence. I have not studied Webster since yesterday. It is in the warehouse—been there for some months. I have not studied Webster since yesterday or any other book. I mean to say I pledge you my word I have not seen any dictionary. I have talked with my wife. I was not instructed by counsel to make a distinction between domicile and residence. We talked this matter up coming down in the car. We could have one residence or two residences or three residences. Yes, this was today. Not with my counsel, with my wife. You have asked me that question three or four times. I have told you no. My word is as good as any man's in this room. I have spoken to no one. I will leave it to my counsel. Their word, I presume, you can take. I was asked at that time whether I had written that letter, and was asked to state who the persons were who had insulted me. I think their names were taken down. Among them was Juan Bautista Dulac, the agent of the company; that is one of them.

Q. "Juan Bautista Marcana, La Palma, one Cabreara, and certain teamsters with other members of the populace whom I don't know?"

A. Teamsters.

Q. Teamsters?

A. There are no teamsters in the city.

Q. Do you remember what you said—is that substantially correct?

A. Might have been several persons; I did not mention that word teamsters.

By the COURT:

Q. He is asking you now what you said then?

103 A. I don't remember what I said; it might have been teamsters; I know I remember giving those names.

By Mr. COUDERT:

Q. Is that then substantially correct?

A. More or less—yes, sir.

Q. "With respect to the present officials I have no complaint to make of them nor of their chief General Hernandez inasmuch as at the date to which I have referred the legalist army had not made its entry." Is that your statement substantially?

A. I think it is pretty near what I said, because the legalist army had not. A great portion had come in.

By the COURT:

Q. He only asks you if you said so?

A. I don't remember.

By Mr. COUDERT:

Q. It should be stevedores and not teamsters?

A. There are no stevedores.

Q. Did you state, "The statements I have made had reference to the officials in charge on the 11th of August" that is the statement you made here in your letter?

A. I think I did, sir.

Q. "As to the threats against my life they were made by a mob which at the time that I went on board the steamer Callao threatened me with cries of 'Come ashore again,' 'Death to Underhill'—'Down with Underhill'?"

A. But I said more than that about that.

Q. Did you say that?

A. Will you allow me to repeat?

Q. No, I don't want to hear what you said.

The COURT: Not now.

A. I said that much—yes, sir.

Q. "After I left the boat Mr. Manuel Grillet"—you said a good deal more than that?

A. Yes, sir.

Q. What did you mean then by saying your deposition was a few lines, and it was so much longer here?

104 A. I said you had a pamphlet filled there, and this covered two pages of legal cap paper—of stamped paper. You must produce the stamped paper it was written on. It was the stamped paper from the government.

Q. "After I left the boat, Mr. Manuel Grillet escorted me under his protection to the Hotel Krone where I remained until the afternoon under an armed guard furnished by the mob itself?"

A. No, sir; the mob itself was not in it.

Q. "Under an armed guard"—was that true?

A. Under an armed guard headed by Hernandez's General Vega.

By the COURT:

Q. If you pay close attention, he is not asking you how it was, but how you said it was—whether you said that?

A. I did not say that—no.

By Mr. COUDERT:

Q. I will read it slowly; I am not asking what the facts were; I am asking you if you said this: "After I left the boat Mr. Manuel Grillet escorted me under his protection to the Hotel Krone." Was that what you said in substance?

A. Well, I remember mentioning Manuel Grillet's name, but I had other names there also.

Q. You may have said something else. Did you say that?

A. That was part of it.

Q. "Where I remained until the afternoon." Did you say that?

A. Yes.

Q. "Under an armed guard"—did you say that?

A. Yes.

Q. "Furnished by the mob itself." Did you say that?

A. No, sir.

Q. Were you asked "Who was present at this performance and can testify about it," and did you answer, "Mr. Manuel Grillet who protected me at the time;" did you answer that?

A. I think I did, sir.

I think I mentioned Mr. Manuel Bigot, also Mr. Guaderamma, also Mr. Olmeta and other persons whom I cannot specify. With regard to the doings of the night and what witnesses I had, I don't

remember having said, "As it was late at night, I could not 105 distinguish any one and the only people who can testify are the people of the house." I didn't say as it was late at night

I could not distinguish any one. The disturbance commenced early in the evening and men were coming in all the while. I made no remarks such as "As it was late at night I could not distinguish any one," because I remember telling them who I saw in the crowd. The half a dozen names I have mentioned here were those in the crowd bringing me from the boat to the hotel. I do not think this is correct; no, sir. This refers to the time after I had reached my house after being liberated from jail. That is not mentioned in there, by the way. The evidence I signed referred to the matter of the jail also. I gave them the names of witnesses as to the night performance. They were all of our servants who knew about that. I told them at the time who I had seen, who had participated in it. I gave them the names of people besides these. I told them who I saw through the street in the night. The phrase "The only people who can testify are the people of the house" must have reference to the servants. I don't remember having said that; I would not refer to niggers' testimony. I did not make any note of the servants. My servants signed nothing. It would not have amounted to anything, for a nigger isn't anything in that country. The statement is wrong, because it don't

state who was in the mob. I don't know as I mentioned the servants. I know they were there. It is very possible that I said they were there if they were there. I told them I was bothered all through the night.

When I was asked as to who was leading the mob I gave several names. I do not know that every man whose name I gave was summoned as a witness to know if he had taken part in anything hostile to me. They were not there. I know they were not there.

Q. Not at your house?

A. Oh, then I had a trial after I left the place, I suppose—I must have had a court-martial after I left, then.

Q. I merely want to know if you can tell me whether or 106 not all those persons whom you name were summoned as witnesses before this criminal court?

A. Not that I know of.

Q. You don't know anything more about the proceedings than what you have stated?

A. That is all about that case.

I was examined as a witness and this statement is partially correct and partially not. I know what is meant by martial law—a place being under martial law. That place has been under martial law several times. It was not under martial law when General Hernandez entered. I did not go out of the house after that arrest for some time. I know there were troops all over through the town. During his time I know it was not under martial law. People could go and come when they pleased and go on every vessel.

Q. It was under the rule of soldiers?

A. Well, only my house seemed to be the only house where there was rule of soldiers.

Q. You didn't go out of your house?

A. I did on several occasions and was sent back again; it was his orders.

Q. You left your house several times?

A. Yes.

He signed himself the "civil and military chief" and people could go and come when they pleased through the town. He appointed everything, president and all, before Crespo had reached Caracas. The president of the city—what we call the local government. So far as I know he established a local government as soon as he got in there, and there was no martial law and the civil tribunals were open to everybody. I appeared to be the only prisoner, and my wife. I think the revolution broke out before February, but I am not certain about it—in February, 1892. I thought it was in January or February. It seemed to me to be the early part of the year. With respect to the troubles in Bolivar, they seemed to begin to flock in—new soldiers—there in May or June. I mean the city of Bolivar. I know that outside they had been ever since trying to get congress together and could not get any decision and they had struck out against the govern-

107 ment. That was along back in the early part of the year

and the revolution had been going, I think, in Venezuela all that time, although there had been no trouble in Bolivar until the spring or summer, as near as I can recollect.

Q. You said yesterday, looking at this Exhibit A, March 27, 1894, a letter to you from General Hernandez, that that stamp was the same stamp that had been used before that in Bolivar—the stamp in the corner (handing witness paper).

A. I said they had used a similar stamp to that. I suppose he merely took the same position that the man he killed filled. Whether this is the same stamp or not I cannot say.

Q. When you say "the man he killed" you mean General Carrera, who was slain in battle, don't you?

A. Yes, sir; all alone; it was not in any battle; it was after the battle was over.

Q. This speaks of the "civil and military headquarters of the Guayana section, territory of the delta, district of the river north of the Orinoco"—have you ever heard that?

A. Yes, sir.

Q. You have heard that designation of territory?

A. Yes, sir; being used by the previous military delegates.

Q. That is a well-known geographical territorial designation?

A. Yes, sir; that includes from the mouth of the River Orinoco up the mining district.

Map is shown witness, who is requested to point out the territory he has described.

The witness continues:

It is a very large territory, but don't comprise many habitations. That includes the delta. What they call the delta is the sunken ground at high river. It is all covered all the way up through here to and including Bolivar and to the north. It took in the town of Barrancas and Las Tablas, a little town, and the mining district Upata; that is 54 miles from Las Tablas. Going to the mines you pass three houses in that distance—Guasipati. As near as I understand it, it commenced here. This is the mouth of the River

108 Orinoco, and this territory extends on the north up to that, around in this way to Angostura and around here. That covers a good many miles of trees and timber. Fifteen sixteenths is not settled at all. It is a rich country ready for foreign capital. I said that Carrera was killed after the battle. That is what I was told. It was a battle. He had fought these people, and the government was victorious and they escaped across the river called Ogaripa. I understood he was killed after the battle. I considered it so from the description given. Personally I do not know. I didn't see him after the battle. I only saw his boots and spurs, sword, etc. I couldn't tell from them whether he was killed in battle or not. I did not go to the American consul, and I did not say so. I said that my wife appealed to the American consul during my sickness. I have no personal knowledge about it, only what my wife and I saw in letters. I have got the consul's letters. I didn't go to the consul. I didn't say yesterday I went to the

consul. I did go to the consul in Trinidad. I am not playing on words with you. You gave me to understand, when I had trouble with him, I went to the consul when I was in Bolivar. I did not go in Bolivar. In Trinidad, when I arrived there, I went to the consul. I understood you fully to ask if I went to the consul in Bolivar. We were speaking of Bolivar. I went to the American consul after I arrived in Trinidad. That was about the 20th. On the night of the 20th and 21st I went in person. My wife, on her arrival there, had gone to him—to the same consul—and previous to that she had written to the consul in Bolivar. I made a statement of my grievances in writing. I have the original. He wanted me to put it in writing. I went to my house on the 11th of August. It was not on the 13th. I did not say so. I said I went to my house on the 11th of August after coming out of the jail, and I said on the 13th of August that I went with General Hernandez on board the steamer Socorro, to see about repairing her according to his orders. Prior to the 13th of August there was a brass cannon brought into the plaza, within a couple of 109 hundred feet of my house. It was not pointed at my house—nothing of that kind. Others were brought in afterwards. I heard they were brought from Trinidad—one of them or two. I do not know whether any of them were taken in battle. I do not think they had been. I do not know whether any of those were loaded. I only heard them loading this brass one in front of my door in August, about the 27th. I do not know whether it was loaded with shot or shell or simply with powder. I know they were going through the evolutions of loading it. I said something yesterday about General Hernandez asking me to vacate the house and my refusal. I think it was about the 21st of August. I did not go, because I did not consider, in the first place he had any right to ask that question. He demanded the house for his troops—for his Winchester men. He was the grand mogul. Had the power to put me out by force of arms. He could not get in—not unless they went over the fence. We would have stayed there. If he got me out of that house he would have had to put me out by force. He did not put me out. He made several demands. After that he sent a man who had furnished me wood for two or three years—was one of his generals. He sent him to implore me to let him have the house. I told him no, not unless they put the things in the street. I call imprisonment putting soldiers around my door, not allowing me to go out of my house. That is what I call imprisonment.

Redirect examination:

Q. You have been asked a number of questions with regard to your understanding of the political situation, president, congress, and so on, and who were the rebels. I would ask you what was your understanding upon this point, as to the situation at that time, namely, whether congress or the federal council ever elected a successor to Pallacio, if his term expired?

A. No, sir; I don't think they did.

Q. That was your understanding?

110 A. That was the general talk all around among the hotels there. I belonged to one of the clubs there—the French club.

By Mr. COUDERT:

Q. That no president had been elected?

A. They could not get congress together; they would not agree. I am sure that there was no successor elected to Pallacio. My understanding was that congress never commissioned a general of the army at that time. The government had their own generals and commanders. My understanding was that congress did not declare war. There is where the split was. There is where the Crespistas and the Gordos—there were two or three factions; they never agreed on these points and there is just the point exactly where they struck out and turned on to Crespo's side and offered to back him up. Sent immediately to the United States to get arms—they revolted against the government, in other words. I understand Crespo was a rebel. He was a revolutionist and had been before in other years. I was asked, I believe, about the repairing of steamers for the government and I think I stated that they had called on me previous to the repairing of the Nutrias to repair the steamer Apure, which I refused to do, which belonged to the same steamboat company. With respect to the Nutrias, the government people under Santos Carrera, military delegate, supposed—naturally supposed—that because I had refused to repair this first steamer that I must be in league with the revolutionary people because my book-keeper had gone over to their side and was this man's secretary. They wanted me to repair and examine the Nutrias. I agreed to examine her—told them what was the trouble and they wanted to know if I could repair it. I inadvertently said yes I could. They wanted me then to go to work and get her as quick as they could. They had got her loaded up with wood and she was disabled. I said I did not want to have anything to do with it. I assigned as a reason, "it will mix me up in revolutionary matters and I have never done any repairs to vessels during revolutions." It went along for a day or two

111 and they kept coming after me, the government people, to my house, and I told them I refused point blank to have anything to do with it. The secretary of Santos Carrera came to my house and told me they wanted to see me over at the commandancia, that is, the headquarters of the commander-in-chief. I went out that night and it had been rumored I was going to be put in jail for not fixing her. I bid my wife good-by that night. Did not expect to get back, for I supposed they were going to put me under arrest. I did not repair it finally. While over there I thought a way out of it. I said, "You have got no right to ask me as a foreigner to fix this vessel and compel me to do it, but if you will give me an order from the people who own this steamer, the board of directors here, to do this work, and they will employ me and put it

in writing and pay me for it, I will do it." They jumped at it immediately and kept me there as a prisoner. Just previous to this, they had sent a man over with a hammock. It was not in jail, it was in the rooms of the commandancia. Well, I waited there. They sent to the house or jail or wherever it might be for one of these men to give his word he would make a bargain with me to repair the steamer. They sent back word he should come to my house in the morning. I was liberated and escorted to my house, because it was night-time and guards were in the streets. It was some distance from my house and after they left me at the corner, then they went through their regular shout of "Halt!" and "Who comes?" &c. I knew all about it and got to my house. They made a contract with me and I repaired the Nutrias and received the money and the government used her as they had done previous to disabling. Never, at any time during these political troubles, did I take sides with either party or in any way break my neutrality. I might say I aided in this way, but without any intent. I had made a bargain with the Count de Montebello to run a gold mine together. He got the concession from English capitalists, and I had

112 agreed to do the engineering work, and we had a certain number of months to run it. The papers were drawn up in

Trinidad and signed by the Venezuelan consul. I want to show you wherein I aided, if they might call it so. I do not know as that was aiding. I got this man out of the country, safe out of the government's hands. I knew he was a Crespista. I did not aid with any intent either one of the parties, either the government or the revolutionists, still my men were in their employ—in the rebels' employ. I considered the house in Trinidad my home after I had paid for the first month's rent in February. I never at any time expressed an intention to the defendant, General Hernandez, to abandon my business of the water works. I had brain fever and all that sort of thing, but I have never forgot myself so far as to abandon a business that cost from seventy-five to one hundred thousand dollars. With respect to the judges who called at my house when I was sick and when my testimony was given, one of them was R. G. Natera. I do not remember the others' names. These men were never judges in the town before General Hernandez came in, never, never. They were appointed by him; young men—young lawyers. When the defendant asked for my house in Bolivar for his Winchester men, no other place was offered to me to go to. The interview I had with General Hernandez was on the 14th of September. I made a memorandum, which is now shown me, at the time, on my return home.

Q. You have been asked, Mr. Underhill, with reference to some of the proceedings on the 11th of August in relation to the mob that took you from the boat. Will you state what occurred?

Defendant's counsel objects.

Objection sustained. Plaintiff excepts.

## Recross-examination:

I did not, in any way, aid or abet what I considered the regular government, namely, the Pallacio government, except in this one thing. When I repaired the Nutrias, it was under the circumstances that I have stated. I did not furnish them with any munitions of war nor work at any. They took possession of my buildings. I did not furnish them with any munitions of war. I did not do anything. I have no other letter of General Hernandez than the one I produced.

JENNIE LAURA UNDERHILL, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

I am the wife of the last witness. I am an American. I first went to Bolivar in 1886. These two pictures, Plaintiff's Exhibits 9 and 10, show the house where I and my husband lived at that time. That is the only house I lived in while I was in Bolivar. I was at Bolivar from 1886 till 1892, leaving there one time only to come home on a little visit. This house was not occupied while I was there in any way except by Mr. Underhill's family and our servants, certainly. Just our family. I remember the time of the political troubles in 1892 in the city of Bolivar. I have quite a vivid recollection of them. I was acquainted with the business that Mr. Underhill was in at that time, the water works. I knew how extensive they were.

Q. Do you know anything about how much Mr. Underhill had invested in them?

Defendant objects. Objection sustained.

Mr. CLARK: I intended to ask this witness all the questions with reference to the mob. I presume this will have the same ruling?

The COURT: That is before the 13th?

Mr. CLARK: Those are excluded?

The COURT: Yes, we will leave that all out.

I first left Bolivar to go to Trinidad in 1892 in quest of a house in February. We hired a house there. I went back to Bolivar after that and went down again on the 22d of March. I took servants and furniture with me then. Took a good deal of furniture and silverware. I then established my house, my home, in Trinidad. My husband and myself did. I left there on the 14th day of June on the steamer El Callao to go to Bolivar, merely to find out if my husband was alive, or what was the reason I had not heard from him in five weeks. I went to Bolivar on the 14th day of June. I was living there from March to June and in June came back to Bolivar, but didn't give up my house in Trinidad. And then I was in Bolivar from the 17th of June until the 2d of October. I then went away without my husband, leaving him in Bolivar.

Q. Now, Mrs. Underhill, please come down to the time when the defendant came into Bolivar on the 13th of August. On the next

day, were you present at the interview when the committee came from General Hernandez with regard to fixing the Socorro?

A. Yes, sir.

Q. Did you hear what was said between Mr. Underhill and them?

A. Yes, sir.

Q. Please state it.

Question objected to and excluded.

At the time Mr. Underhill has testified to, when he was turned back at his gate and told he was not allowed to go out of his house, I was standing in our back gallery when he passed through the yard and went out of the back gate. After going out of the gate, I did not see him until after he returned, and he came back and told me—

Mr. COUDERT: I object.

The WITNESS: I thought I was merely answering the question.

Mr. COUDERT: What passed between her and her husband I object to.

The COURT: Strike it out.

Q. All I mean to ask was whether you were in a position to see what happened outside the gate.

A. I thought I only answered the question. I only saw 115 him go out of the gate and saw him come in the gate.

Q. Was it so hidden you could not see what happened or could not hear what happened outside the gate?

A. I could hear the voices, but I knew not what was going on. I only know my husband came back through the gate and then told me.

Q. You did hear the voices?

A. Yes, I could hear the voices, but I could not hear what was being said \* \* \* made no effort to. I did not know there was any trouble out there.

After that I saw soldiers stationed around my house. Some of them had sabres, cutlasses, some different weapons, weapons of different kinds. A hat band around the hat with "Legalist" on. I first noticed these around the house, I think, on Monday, the 15th. There were two and often three continually stationed on our porch, right out of our bed-room, and where we mostly were. They remained there up to the time I came away, October 2d. They had their arms with them, they were evidently on guard there. I saw cannon placed there around the house; on the 22d of August the first one was placed there and three others afterwards. They were still there when I came away on October 2d.

I saw the defendant, General Hernandez, himself with reference to asking permission for Mr. Underhill to leave Bolivar. It was just when Mr. Underhill was convalescent, about able to be moved. He could have been moved on board the steamer. I went to General Hernandez in person and asked him. I went to his house or what I was told were his private quarters or private office, within

one block of our residence. I was admitted into the waiting-room and told I would have to wait awhile and I could see General Hernandez. After waiting about three-quarters of an hour, a gentleman appeared and asked my business. I gave him my card to take to Mr. Hernandez, and told him I preferred to have my business personally with the General. He stated Mr. Hernandez, he didn't think, could be seen; that I was to state my business to him and he would take it to Mr. Hernandez. Supposing I would

116 have to do so, I told him I came in reference to my husband's departure from Bolivar, to see if he would allow him to leave on that steamer. He went out of the room, was gone a few moments and said I would have to go about 10 o'clock to the government building to see General Hernandez in person. I did not see General Hernandez at that time. That is what happened there. Then I went at 10 o'clock to the government building and saw General Hernandez then. I made known my errand to him, that I came for a passport for my husband and myself to leave Bolivar and he said he could not grant it. I asked his reason. He said my husband would have to be detained there to answer the charge in a criminal court for insulting him in a letter he wrote him on the 24th day of September. So now I know what day I went there. It was about the 26th. When I left the house two or three soldiers followed me. I was accompanied by one of my servants. The soldiers followed me. His soldiers—General Hernandez's soldiers—followed me back. I was present when they demanded my house. Mr. Barrosa was one of those who demanded the house. He was then the prefect of the town, having been appointed on the 14th day of August by General Hernandez. The request of Mr. Hernandez was repeated that he should have Mr. Underhill's house for the Winchester men. Nothing was said as to where I should go. Hadn't the slightest idea where we were to be put. I had a vivid knowledge of the transactions concerning the demand for the mule. It was on the 19th of August, seven days after Mr. Hernandez entered the town, I remember, that his main officer, so considered, came to the house and asked for admittance to see Mr. Underhill. He could not be seen and I demanded or asked for his business. I did not allow Mr. Underhill to go. He was in great danger. Neither one of us ever appeared at the door. I saw all of these messengers who came to our house. I took it upon myself to see them for fear, as soon as my husband appeared at the window, he would be shot. I learned the business of this

117 gentleman was to get Mr. Underhill's mule and cart to be used by General Hernandez for some purpose. I made it known to my husband and he said he would not give up the animal. I returned to the window and gave his answer to the officer who took the answer to General Hernandez, I presume. This happened on the 19th, on Friday. The next day Mr. Manuel Grillet came personally from General Hernandez, and he was always admitted into our house, as he was also a friend of ours—we presumed so—and he asked again for the mule and insisted upon Mr. Underhill's giving it up, saying that his refusal to do so would make

things a great deal worse for him as long as he was held in the house; he should give in to every demand that was made. Mr. Grillet asked for the mule, insisted upon it. He came directly from General Hernandez for that purpose at that time. The mule did not go away on that day. Mr. Grillet went away with the same answer. The mule did not go away that day. Mr. Grillet returned to General Hernandez with the answer. On Sunday he returned and repeated his entreaties with Mr. Underhill, and on Monday an officer and three or four men of General Hernandez came to the door and demanded an entrance, and said they were going to have that mule; that it was General Hernandez's imperative orders it should be given up, and if I did not open that gate and allow him to come and get it, they would get over the wall and take the bar down and take the animal out themselves. That is word for word what they said. I came to Mr. Underhill and repeated it. He said: "I presume I have now got to give up the animal," and he gave him up, his sick animal which was hardly able to hobble out of the gate. He gave up the animal. The animal left us, not with Mr. Grillet. Mr. Grillet was not there, as I remember. The animal would have been in good hands, probably, if it had been with Mr. Grillet. When the animal came back, her back was covered with sores and she could hardly walk. She was returned on the Thursday following, on the 25th. We refused to take the animal.

118 Mr. Underhill did not see the officer who brought her back.

Mr. Underhill was taken sick about the middle of September. He was sick for three weeks. For two weeks he was seriously sick in his bed, in danger. He was out of his head. My husband had brain fever. It was caused by this continual worriment. During the period from August 13th to the time I left, I am not quite sure whether Mr. Underhill went out two or three times. The guards followed him when he went out.

The cannons were pointed directly to our door and window.

Harold Jennings was living at the house. So far as we know, he is now in Bolivar. I have sent for him to come north. Very often spoken to him about coming north. Any time he could find a chance to leave he might come. I told him that this case was coming up and if he could reach here in time for it, he would be a witness for us, that is all.

Plaintiff's counsel read the deposition of James Rowe, taken on the 20th day of March, 1894, *de bene esse*, he being about to sail for Europe.

JAMES ROWE, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

My name is James Rowe. I live in Plymouth, England. Am 37 years old. Am staying temporarily in New York. I am going to sail for England tomorrow morning on the Berlin. I might be back in a month or a couple of months. I am a seafaring man and my movements uncertain. I have to get my living that

way. In August, 1892, I was steward on board the El Callao, running between New York and Bolivar, calling at several ports between Bolivar, Venezuela. It was at Bolivar in August, 1892. The captain was Capt. Wetherell. Mrs. Wetherell was with him on that trip.

119 I know George F. Underhill and his wife, Mrs. Underhill, perfectly well. I saw them in August, 1892, the first trip. That was all I did see. I remember the occasion on that trip when Mr. and Mrs. Underhill were taken out of the little boat perfectly well.

Q. State what you saw on that occasion ?

Mr. Coudert objects unless the question is connected with the defendant in this case.

Objection sustained.

Plaintiff's counsel then and there took an exception.

Q. Where were you ?

Same objection, ruling.

Q. And you were near enough to the shore so that you could see ?

Same objection, ruling.

Q. You say you saw guns pointed at them ?

Same objection and ruling.

Q. And the mob actually hustled them out of the boat ?

Same objection and ruling.

Q. And carried them along the streets ?

Same objection and ruling.

A. On that trip I did not see them again. The vessel sailed away the same day. The mob did this, I should say, between seven and eight o'clock in the morning. My ship, when it sailed, went to Trinidad and afterwards direct to New York. We came back again in October, I think, the same year. I did not see Mr. Underhill that time. I tried to see him.

Q. State what you did.

Objected to by Mr. Coudert; excluded.

—. I went up the street towards Mr. Underhill's. I had a little provisions with me for him. When I got to his house, I could not get near his house because soldiers were there that wouldn't let me pass. They had just the usual blankets on them and muskets slung over their arms and white bands around their hats. I noticed that particularly because I stood alongside of them. I got near the house. They called out in Spanish. I said "English," and made towards the door. They came towards me and felt what I had in my parcel. I said, "Poco de carne." I know what that was, "A little meat." I tried to get by them. They

wouldn't allow me to pass. Then I backed and I went up to get in at the other door of his house. I found there the same resistance just as I had before. Not only resistance, but I saw several cannons pointed towards his house. I could not go into the house. I tried to get to the door but the soldiers said: "No, no, no." I went right around the house and tried to get in his back door. I could not get in there. In fact, I didn't go to try. There were soldiers standing around—no use to try. I went back to the ship. I tried to get to the house again the last evening I was there, four or five days after. It was the night before I sailed. My experience this time was merely the same as when I went up the first time. Soldiers were there still—the same sort of men. I could not tell whether they were the same men. They were dressed in the same uniform exactly. They would not allow me to go near the house at all. On the first trip in August, the little boat, the ship's boat, had been sent ashore for Mr. Underhill and Mrs. Underhill. The chief officer sent them to bring them to the ship. Mr. Underhill had a residence at Trinidad at that time. I know he had. I have been at his house in Trinidad.

Cross-examination by Mr. COUDERT:

I am not an American by birth or nationality. I am an Englishman. I was steward on the El Callao. I had been in the vessel one year, nine months. I am not on her yet. I have left my vessel last Saturday, the Salamanca. This vessel sails between here and the West Indies. I knew Mr. Underwood before 121 I saw him in the small boat. I had seen him in Bolivar. I saw him every trip I went there. I was friendly with him. I used to go to his house. He lived in the same house all the time. The house was in a square in a large open place and stood by itself. There was a large open space all around. I don't know whether that open square and that house belonged to the State or not. I don't know how long the Underhills lived there. I don't speak any Spanish. I can say "Manana" and such little things, but I cannot speak Spanish. I am sure they understood what I said. As showing that they understood me they put their hands against my breast and said "No, no, no." I am perfectly sure they understood what I said, because they did that. I had only the parcel. I had no written paper or permission. I simply went there as a messenger from the ship. All I said or could say to explain was "A little meat." They did not allow me to go into the house. I cannot state the date of the month of my first experience there. It was in August. I cannot tell the day of the month. I heard the chief officer send the boat for Mr. and Mrs. Underhill. I heard him tell the men to go ashore and fetch Mr. Underhill and his wife. That was the first I knew of it that they were coming to my ship. That was all I know of it. On our ship, we had other people from Ciudad Bolivar. We had a lot of government people there who were escaping that night—came on board in the night. I do not know that our people were helping them to get away at night. We got

their luggage on board and I helped them at night to get away. I knew they were running away from the way it was done at night. I know what they were running away for. I heard that the rebels were coming to town. They were going away because they were frightened. I did not know whether Mr. Underhill was frightened. I didn't know why he was getting away. I knew there was a political agitation there, political trouble, a revolution. Some of

122 the parties to the revolution went away that night. I do not know who was the commander in authority when I was there. I heard several names. Hernandez, I heard that name distinctly. I would not swear that General Hernandez was the chief in authority. I heard his name. Heard that he was a conspicuous man there. I could not swear that I heard he was the general commander there. I heard some such name as that—Hernandez—all the time. I did not inquire who was the head of the government there. I did not know under whose orders the soldiers were there. I did not know how long the cannons had been there. I know nothing except there had been a disturbance. I saw soldiers there. Three or four came over to me and there were others all around. They spoke Spanish to me. I could not give the words. I could not understand. They understood that I wanted to get into that house. I made them to understand that I wanted to get into that house. They did not understand what business I had there without any papers or authority. All I could say was "Poco de carne, Manana," and little things. I did not suppose that being an Englishman I could get in anywhere. I do not think that at all. Having told them that I was an Englishman and that I had un poco de carne, I was very much surprised that they did not let me in. I could not tell you the length of Mr. Underhill's house—a pretty long house. I do not know whether it was 25 or 250 feet. If I saw the house, I could tell you something about the size. I am not a practical sailor. I am only a steward. I can tell the size of my kitchen on the ship by my eye. I wish I could go into the measurements of the house. It was all and more than 25 feet long. I should say it was 100 feet long. I couldn't have knowledge whether it was 150 feet long. I know the house was a good-sized house. It was white outside—a stone house. This photograph now shown me is the house. I do not observe a flag on it. It was evening when I got there. The flag in the picture is Spanish—at least American. I see the stars there—United States of America.

123 It was evening when I went there and I never saw any flag. It was a private building because I had been to Mr. Underhill's house many a time.

It was a private house because some one lived in it. It did not look like a public building. This is the kind of a house men put up to live in with their wives generally. That represents the rear; I cannot see the front. The guns were pointed on the rear of the house. I could not swear there was a public square on the rear. I know very well the hospital is there, handy.

The witness is shown a paper purporting to be a plan showing

the Underhill house and the surroundings, being the same plaintiff heretofore referred to and shown during the examination of the plaintiff.

The witness continues:

This marked "Underhill" would be the house. This marked "frente" would be the front of the house. I could not give any judgment as to whether the part marked "puerta" would be the rear of the house. I had been there several times. Always got in unmolested until that time, until the revolution. I got there without difficulty. At the part marked "I" there were barracks. I do not know about artillery. I saw cannon there. I do not know whether in those barracks there was an artillery regiment or artillery troops or not. I know there were artillery on that public place on the rear of the Underhill house and a great many soldiers and barracks. The soldiers were standing all about. There were no guns on the front arch of the door, not that front door. The only guns that pointed to this house were all in the rear. Nothing at the front door, only soldiers. Three came over to me and several sat on the stoop. I could not say the number. I never counted them. I know three came over and spoke to me. There were soldiers scattered right around. There were cannon at the end of the house. I know it was pointed straight at Mr. Underhill's door and window. You show me the house and I can tell where they were located. I do not understand this drawing. I am not a

124 drawer. I know that the house had a rear and two sides.

In front there were no cannon. I did not see any guns on the rear. The guns were at the end. There were soldiers at the front or back. I cannot show you where the guns were on that plan.

If I had a picture of the house, I would. I have described it as well as I can. I know there are various public buildings around there. I have heard of a theatre there. I cannot form it on the plan at all. "B" represents a square, which is said to be Bolivar square, "Plaza de Bolivar," what we call the park. Next to the park, coming down, with "E" in it, I remember there were barracks for soldiers there. There were tanks at the rear or back of the house, large tanks. What they were there for I do not know. I never saw a house of that size with so large a tank for its own purposes. I do not know that I had. Do not know what the tanks were there for. I should never give it a thought that from seeing these tanks and seeing how large they were that they were for something else besides supplying the wants of Mr. and Mrs. Underhill. It strikes me in no particular at all, because I do not see that I had any need to think what they were for. I did not observe a convent there. I did not see General Hernandez while there (looking at Mr. Hernandez, who is present). No, sir; I never saw him. I had visited this house before where Mr. Underhill lived with Mrs. Underhill, about every trip I made. I do not suppose a dozen times. I used to make a trip every five or six weeks. I went there, I suppose, 5, 6, 8, 10 times. I walked about the place very little.

Q. Did you observe when you were there, before this month of August, whether there were soldiers there or not?

A. Never went by there; not that trip, because it was evening when I went there, and I found I could not go there after eight o'clock, and they told me it was just the same up at the other end of the town. I went there at night, never in the day. I was admitted after eight o'clock before. I never got my work finished to go ashore until between seven and eight o'clock. There was

125 no interference with a man's landing after eight o'clock.

There was no interference with going there after eight o'clock, only at the time of the revolution. At the time of the revolution you couldn't go there after eight o'clock. Couldn't go outside the town at all. I don't know, but this was outside the town. I don't know the boundaries of the town. I know I couldn't go down the river side the other way. You asked me what time I went there. I didn't go there after eight o'clock during the revolution. It was only one trip. We were there before it broke out. I was not informed that after eight o'clock I couldn't go there. I didn't try to go there that trip. You asked me what time I went to the house. I told you what time I generally went to the house. I didn't mean to say anything about this trip at all. I didn't say that I didn't go on this occasion after eight o'clock, because during the revolution I couldn't go there after eight o'clock. You asked me when I went there. I said I heard something about not being allowed to go out of the city after eight o'clock during the revolution. I heard that at that time. I never went ashore on that trip. The trip, when we carried off the other men, I didn't come ashore at all. I never took any notice of any soldiers before that time on my former trips around or near the house occupied by the Underhills.

Q. But there might have been?

A. No, not near the house. I looked around and saw whether there were buildings there, barracks. I know what barracks are. I saw barracks there the first time I went there. Barracks is a place for soldiers. I do not know whether there were any soldiers inside. I suppose the barracks were there only for the soldiers. If I took any notice I would have seen barracks there. I never was stopped going to Bolivar before. I observed long before this trip of mine in October that there were barracks for soldiers all around Mr. Underwood's house—a good distance from his house, not close to his house, about 30 or 40 yards away.

126 Redirect examination by Mr. CLARK :

I am not a draftsman. I cannot tell a draft when I see it. I do not understand drawings very well. I do not understand this sketch that has been shown me, marked "Defendant's Exhibit Drawing of Streets." I would not attempt to say whether that is drawn correctly or not. I would not swear. I do not understand drawing at all. I never was stopped before when I went to see Mr. Underhill before this one occasion in October. I never saw soldiers standing around his house before as they did then. There were

probably a couple of dozen right around the house—hanging around there. Some sat on his steps. Some laid against the wall of the house. They were guarding the house. I could understand enough to know that. When the soldiers stopped me, I got about seven or eight feet from the front door. There was no question in my mind but that they did stop me. They would not let me go any farther. They did know that I wanted to get into the house. I tried to push the way to the house. They wouldn't allow me to go to the house. They put their hands on my breast, pushed me back, and said, "No, no." I do not know what street the house is on. I do not know the name of a street in Bolivar. The photograph that was shown to me does not show where the cannons were pointed to. I cannot see the door at all. Cannons were not on this side of the house, not on the side of the house shown in the picture. The side of the house towards which the cannons were pointed is what I call the end of the house. I do not know the name of any street in Bolivar. I had never seen those cannon on any other trip. I saw three cannon. They were pointed directly at Mr. Underhill's door and window. There is no question in my mind on that, because they wouldn't let me pass inside the canon. They made me go around.

Recross-examination by defendant's counsel :

127      Recalling what I said about the trip in August, when we carried away at night these men who had been engaged in the revolution, I do not remember leaving in the morning in great haste with our ship. I do not remember that we left without all the necessary and usual papers. I remember that we did not discharge our cargo because we took the government people away from the town. As to whether we were afraid, that was with the captain. I only obeyed orders. I know we did not discharge our cargo because we had taken these men on board. I do not know whether we had to pay a fine the next time we came on again for going away without our necessary papers. They did not belong to my department.

JAMES WETHERELL, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

My home is in Brooklyn. In 1892 I was captain of the steamer El Callao, plying between New York and the northern ports of South America. I was at Bolivar with my vessel in August, during the revolution there.

Q. Did you see the mob taking Mr. Underhill from the little boat on August 11th?

Objected to by defendant's counsel. Excluded by the court.

Q. State what you saw.

Same objection, ruling.

After that trip I came back to Bolivar with my vessel in October.

I did not, on the last trip, go ashore at Bolivar. The steward on my vessel at that time was James Rowe. I could not see Mr. Underhill's house from my vessel. It was too far away.

Cross-examination:

128 When I returned I ~~had some trouble because of leaving~~ irregularly. That is the reason they gave me. It was true.

When I came back, General Hernandez was in command, they said. I believed it. I knew it, I may say. I appealed to him for protection. I was afraid to go ashore without his help. I understood he was in authority; that he was in authority there—the great mogul. You put it about right. I would not go ashore without his aid and protection. I thought I could not do so safely. I wrote the letter now shown me. That is my handwriting and signature. It was between the 3d and 12th or 13th of October. I carried off the government officials at Bolivar, rather the men that were the government officials when I went there. I was asked to give them refuge, and I gave it. I do not suppose you find any fault. It is immaterial if you do. I think it was on a Sunday in October.

The letter is offered in evidence by defendant's counsel, and marked "Defendant's Exhibit E, March 28, 1894."

The letter reads as follows:

"STEAMSHIP EL CALLAO.

"SEÑOR HERNANDEZ: I have a message by bearer requesting a visit from me. I have been ill since I came here, and am so yet, but, if possible, tomorrow I will try and comply with your request, and wait on you at what hour you may desire. At the same time, I understand the feeling of the people is rather bitter against me, and I hope you will give me your safe conduct.

"Yours respectfully, JAMES WETHERELL."

Plaintiff's counsel offers the testimony of Mr. Wetherell with regard to the mob of the 11th of August.

Objected to by defendant's counsel.

Excluded by the court, and plaintiff's counsel then and there excepted.

129 Mr. COUDERT: I renew my motion for a direction, and I am ready to argue it. I think the matter is now very plain as to any question which your honor has any doubt. The Supreme Court of the United States has settled it. It is manifest it was not in any private capacity General Hernandez did whatever he did. Today they have proved that so far from imprisoning him in his house, they tried to get him out, and he would not go. General Hernandez asked repeatedly for the house, and he said no; they would not let him get in. But, apart from that, it is manifest whatever was done by the defendant, was done by him as the government *de facto* of that place, and the testimony is unqualified about that. There was a revolution that had been lasting six

months. General Hernandez was connected with Mr. Crespo, who was recognized on the 6th of October, while this very thing was going on. He was recognized as the government, and certainly General Hernandez was the government *de facto* of that district, a district which, according to Mr. Underhill today, extended over forty, fifty or sixty miles. He said there were not many houses there—two or three, or four, or whatever there might be. Without elaborating it, I submit to your honor I am entitled to have a direction to the jury.

The COURT: What do you claim?

Mr. CLARK: That Mr. Underhill was confined in his house by the orders of General Hernandez; that he was confined in the city of Bolivar, refused—stopped from going away.

The COURT: Refused passports?

Mr. CLARK: Refused permission to go away; that General Hernandez was in absolute control there, without authority, without right, but as a matter of fact he had control, and could prevent any one from going away or leaving their house, as he did, by the use of his soldiers; that he had acted entirely without authority; that all the officials had left the place; that this was not done by an official in any way; he was not an official of the government, either of the city, or the State, or the nation; that it was a rebellion, a revolution, and the word "revolution" implies that it is not done by authority.

130 The COURT: Take the proof just exactly as it stands. You understand the plaintiff to have said he was a general, had command of soldiers, fought a battle, had been victorious, and then came into the city and took possession? You understand that? Am I right about that?

Mr. CLARK: Yes, sir.

The COURT: As I remember, the witness said the civil authorities had all gone, and he took control of the city as a general of soldiers, army of some size or other under his command, and had possession in that way?

Mr. CLARK: Yes, sir.

The COURT: What he did!—do you claim he did anything except as such a commander? Something was said about soldiers, and cannon, and so on about the house, and being pointed at the house, but I understood the witness to say they were not pointed to attack the house.

Mr. LOGAN: Keeping him from going out.

The COURT: I did not understand him to stick to that. He started to go out and soldiers ordered him back.

Mr. LOGAN: They certainly were not pointed towards his house to protect him. They would have been pointed the other way to protect him.

Mr. COUDERT: Were they loaded?

Mr. LOGAN: They looked loaded.

The COURT: There has nobody said anything about it, except when he tried to go away. The soldiers had hat-bands, or marked in a particular way, and they told him he could not leave. Mrs.

Underhill asked leave to go, and he refused. That is about the substance of your case.

Mr. CLARK: Except that he had no authority to do this, even as a military commander.

The COURT: This is what he did.

Mr. CLARK: Without reference to the law.

The COURT: After he got there he assumed control of that place—had command. You understand that?

Mr. CLARK: He assumed command.

Mr. LOGAN: He had the physical power.

131 The COURT: He had it as commander.

Mr. LOGAN: He had the physical power, because he had these soldiers or people under him who would obey him. We do not concede the legality of his authority.

The COURT: I am not asking you about that. I am asking you whether you claim he did anything at all except as acting commander of the soldiers who had won this battle a little way out, and then he came into the city and assumed control, and his refusal was when he was applied to as such an officer having control. Do I understand that right?

Mr. LOGAN: His soldiers restrained Mr. Underhill in his house, contrary to the constitution of Venezuela; prevented him from going abroad; imprisoned him; subjected him to all these indignities; that he did it because he had the power, and the reason why he was able to do it was that he had these soldiers—these armed men under him, who would obey him.

The COURT: When Mr. Underhill wanted to go he applied to him as the man of whom he had got to ask leave to go, because he knew—

Mr. LOGAN: He would stop him if he did not.

The COURT: That is right.

Mr. LOGAN: As a matter of physical power; yes, sir.

The COURT: Then your case turns on whether you can maintain your action for keeping the plaintiff there, when what he did he did as such commander-in-chief in control of military authorities, although it is not shown he was acting directly under the government. You have not got that yet, except that he assumed to act, and in October that was recognized.

Mr. CLARK: It was only recognized October 23rd.

Mr. COUDERT: October 6th, and admitted on the record it was October 6th.

Mr. CLARK: That Crespo got into Caracas. Our Government did not recognize it until October 23rd. October 23rd the new government was recognized.

The COURT: Who was the new government?

Mr. CLARK: Crespo.

132 Mr. LOGAN: It is not shown that Hernandez was the new government?

Mr. CLARK: It is not shown that Hernandez was under Crespo.

The COURT: Mr. Underhill said he understood General Hernandez was under Crespo.

Mr. CLARK: He was in sympathy with that movement, but as an independent general.

Mr. LOGAN: Hernandez raised troops in the north, and they afterwards came together.

The COURT: This is your case—whether you can maintain an action against an officer who has got so far as to have an army under his command and in control of a place, civil and military, and tells a man that he must not go.

Mr. LOGAN: I think that is substantially it—whether we can maintain an action against a man who, without any authority of law, organizes—gets together armed men who will obey him, and drives out the previously constituted authorities, and assumes to be the dictator, king, president, congress, judge of all the courts, and everything else.

The COURT: He has got following enough to have an army and take and maintain control.

Mr. LOGAN: He has got following enough to have the physical power—if he said that Mr. Underhill's head must come, he could cut it off.

The COURT: If he said stay in, he must stay in.

Mr. LOGAN: Or if he said go out; if he wanted his mule, come and take it.

The COURT: If he said all the people should stay in their houses, they would have to stay.

Mr. LOGAN: I guess they would; there would be a lot of them get shot if they didn't.

The COURT: Can you cite me to an authority where a civil action has been maintained against a person who had such military control?

(After argument.)

The COURT: I should like to look into this matter a little; 133 my personal inclination is not quite well enough settled. I am inclined to stop here until tomorrow morning at half past ten.

Mr. COUDERT: I have a very full brief of authorities, if your honor will look at it.

The COURT: I will take your brief, and the other side's.

The plaintiff's counsel also requested the court for leave to go to the jury upon the following questions:

1. Whether the defendant imprisoned the plaintiff.
2. Whether the defendant assaulted the plaintiff.
3. Whether the acts committed by the defendant were committed as military acts.
4. Whether the acts committed by the defendant were within the ordinary rules of civilized welfare; the city of Bolivar at that time being in no disorder.
5. Whether there was any necessity or justification for the defendant's acts against the plaintiff as military acts.
6. Whether the defendant, at the time he imprisoned or assaulted

the plaintiff, was a civil officer of Venezuela or any political division thereof, either *de facto* or *de jure*.

7. Whether the defendant, at that time, as such civil officer (even if we admit him for this purpose to be such), had a right to commit the acts against the plaintiff.

8. Whether the defendant, at the time of the acts, was a military officer of Venezuela or any political division thereof, either *de facto* or *de jure*.

9. Whether the defendant, at such time (even if we admit him to be such military officer), had the right to commit the acts against the plaintiff.

10. Whether or not, at the time the acts were committed, the defendant, or the political party to which he belonged, had been recognized by the Government of the United States as a government *de facto* or as having belligerent rights.

11. Whether the defendant, at the time of the acts complained of, had any commission from, or was acting under any authority from Crespo, or the leaders of the revolution.

The court, however, denied each of said requests to go to the jury and granted an exception to the denial of each of said requests, which exception the plaintiff's counsel then and there took. Thereupon the court rendered its opinion on the defendant's motion for the direction of a verdict as follows:

The COURT: Since the court adjourned last evening I have taken considerable pains to inquire into this subject and look into these cases; and, giving them such consideration as I have been able to give them, I am not able to see that the plaintiff would have a case anyway unless it is assumed or testified to that the defendant was commander-in-chief of soldiers. There is no evidence that the defendant himself did anything about keeping the plaintiff in his house, holding him there, except as it was shown that he was prevented from going away by soldiers who were under the command of the defendant; so that what the plaintiff claims to recover for is for what it is claimed to be proved that the defendant did in the way of restraining him in his house as commander-in-chief of soldiers. Well, now, I do not think the justification as commander-in-chief rests on recognition by our Government, but rests on the fact of being in a state of war, military rule, the civil authorities suspended, and he was in command. That is the foundation of the plaintiff's case—that the defendant was in command, and what was done was done pursuant to his command as the supreme commander there. In such a case I do not understand there is a right of action; that is a justification—that is, the civil law is suspended; that is silent; the military law is in force; so, however unfortunate it may have been to the plaintiff, he has sued the defendant as a commander-in-chief of the forces for what, as such, he did to him, which, in my view, does not furnish any right of action whatever; any more than a Virginia farmer could have sued General Beauregard for what they did at the battle of Bull Run—tore up his grass and made mischief there. If he had

brought such a suit he would have been defeated—could not have recovered. If such a suit could be maintained, why, a great many men in this country would not have much of an estate left. I do not think there is any relief in court; this is my impression; this is what I think after studying it over as carefully as I could since we adjourned yesterday afternoon. Therefore we should gain nothing by spending any further time with the case. If I am wrong about that, the plaintiff has a speedy and handy way of review to make it right. So, Mr. Clerk, you may take a verdict for the defendant by direction of the court.

Thereupon the court directed that a verdict be rendered for the defendant by direction of the court and the plaintiff's counsel then and there excepted.

Thereupon, pursuant to said direction of the court, a verdict was taken for the defendant and the plaintiff's counsel then and there duly excepted.

The court granted a stay of all proceedings for sixty days, with sixty days to make a case and bill of exceptions.

The foregoing comprises all of the evidence and all of the proceedings had upon the trial of this action.

And inasmuch as the said matters produced and given in evidence on the said trial, and the said exceptions, do not appear by record of the said cause in the circuit court of the United States for the eastern district of New York, the plaintiff has prepared and caused to be settled this bill of exceptions as a record thereof in accordance with the statutes of the United States, which said bill of exceptions the said court hereby signs and orders on file this 21st day of May, 1894.

HOYT H. WHEELER, *Judge.*

136      The foregoing bill of exceptions is correct as to form.

LOGAN, CLARK & DEMOND,  
*Plaintiff's Attorneys.*  
COUDERT BROTHERS,  
*Defendant's Attorneys.*

Dated May 19, 1894.

And now the stay of proceedings herein is hereby vacated, and upon the filing of the foregoing bill of exceptions let judgment be entered on the verdict.

HOYT H. WHEELER.

(Endorsed :) Bill of exceptions. Filed May 21, 1894.

United States Circuit Court, Eastern District of New York.

GEORGE F. UNDERHILL, Plaintiff and Plaintiff in Error, }  
against  
JOSE MANUEL HERNANDEZ, Defendant and Defendant in Error. }

*Assignment of Error.*

The plaintiff and plaintiff in error, George F. Underhill, by his attorneys, Logan, Clark & Demond, pursuant to the rules and practice of the courts of the United States, hereby assigns the following errors committed in this cause, and says that in the record and proceedings herein there are manifest errors in this, to wit:

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I.

The court erred in refusing to receive in evidence the paper marked Plaintiff's Exhibit 4 for identification.

II.

The court erred in excluding plaintiff's evidence with respect to the cost and value of the income received from the water-works system and property of the plaintiff erected in Ciudad Bolivar.

III.

The court erred in excluding evidence offered by plaintiff concerning the assault and imprisonment of the plaintiff on the 11th and 12th of August, 1892.

IV.

The court erred in excluding the evidence of the witnesses Rowe and Wetherell as to what occurred when the plaintiff and his wife were taken from a boat by a mob in August, 1892, at Ciudad Bolivar.

V.

The court erred in refusing to submit the case to the jury as a whole.

VI.

The court erred in refusing to submit to the jury the question as to whether the defendant imprisoned the plaintiff.

VII.

The court erred in refusing to submit to the jury the question as to whether the defendant assaulted the plaintiff.

VIII.

The court erred in refusing to submit to the jury the question as to whether the acts committed by the defendant were committed as military acts.

## IX.

The court erred in refusing to submit to the jury the question as to whether the acts committed by the defendant were within the ordinary rules of civilized warfare, the city of Bolivar at that time being in no disorder.

## X.

The court erred in refusing to submit to the jury the question as to whether there was any necessity or justification for the defendant's acts against the plaintiff, as military acts.

## XI.

The court erred in refusing to submit to the jury the question as to whether the defendant, at the time he imprisoned or assaulted the plaintiff, was a civil officer of Venezuela or any political division thereof, either *de facto* or *de jure*.

## XII.

The court erred in refusing to submit to the jury the question as to whether the defendant, at that time, as such civil officer (even if it be admitted that he was such) had the right to commit the acts proved to have been committed against the defendant.

## XIII.

The court erred in refusing to submit to the jury the question as to whether the defendant, at the time of the acts proved, was a military officer of Venezuela or any political division thereof, either *de facto* or *de jure*.

## XIV.

The court erred in refusing to submit to the jury the question as to whether the defendant, at the time proved (even if it be admitted that he was such military officer), had the right to commit the acts proved to have been committed by him against the plaintiff.

## XV.

The court erred in refusing to submit to the jury the question as to whether or not, at the time the acts, as proved were committed, the defendant, or the political party to which he belonged, had been recognized by the Government of the United States as a government *de facto* or as having belligerent rights.

## XVI.

The court erred in refusing to submit to the jury the question as to whether the defendant at the time of the commission of the acts complained of had any commission from, or was acting under any authority from, Crespo or the leaders of the revolution.

## XVII.

The court erred in directing a verdict for the defendant and against the plaintiff.

## XVIII.

The court erred in not overruling the defendant's motion for a direction of a verdict for the defendant.

Wherefore, the plaintiff and plaintiff in error prays that the judgment of the circuit court of the United States for the eastern district of New York in favor of the defendant and against the plaintiff be reversed.

Dated New York, June 4, 1894.

LOGAN, CLARK & DEMOND,  
*Attorneys for Plaintiff and Plaintiff in Error.*  
 58 William Street, New York City.

SIR: You will please take notice that the within is a copy of assignment of error duly filed and entered herein in the clerk's office of U. S. circuit court, eastern district of New York, on the 6th day of June, 1894.

Dated New York, June 6, 1894.

Yours, &c., LOGAN, CLARK & DEMOND,  
*Att'ys for Plff, 58 William Street, New York.*

To Coudert Bros., att'ys for def't.

(Endorsed :) U. S. circuit court, eastern district of N. Y. Geo. F. Underhill, pl'tff and pl'tff in error, against Jose Manuel Hernandez, def't and def't in error. Assignment of errors. Logan, Clark & Demond, att'ys for pl'tff in error, 58 William street, New York. Filed June 6, 1894.

Circuit Court of the United States for the Eastern District of New York, in the Second Circuit.

GEORGE F. UNDERHILL, Plaintiff,      }  
 against    } Supersedeas Bond.  
 JOSE MANUEL HERNANDEZ, Defendant.      }

Know all men by these presents, that we, George F. Underhill, of the city of Brooklyn, county of Kings and State of New York, as principal, and Clarence Kenyon, of 170 St. Mark's avenue, Brooklyn, N. Y., and Charles E. Phelps, of Bay Shore, L. I., as sureties, are held and firmly bound unto the above named Jose 141 Manuel Hernandez, in the sum of four hundred dollars (\$400.00), to be paid to the said Jose Manuel Hernandez, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of June, in the year of our Lord, one thousand eight hundred and ninety-four.

Whereas, the above-named George F. Underhill has prosecuted a

writ of error to the United States circuit court of appeals for the second circuit to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York.

Now, therefore, the condition of this obligation is such that if the above-named George F. Underhill shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make his said writ of error good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

GEORGE F. UNDERHILL. [L. S.]  
CLARENCE KENYON. [L. S.]  
CHARLES E. PHELPS. [L. S.]

STATE OF NEW YORK, }  
County of New York, } ss:

On this 4th day of June, 1894, before me, a notary public in and for the county of New York, personally appeared the above-named George F. Underhill, principal, and Clarence Kenyon and Charles E. Phelps, sureties, to me severally personally known and known to me to be the individuals who executed the foregoing bond, and severally acknowledged to me that they executed the same for the uses and purposes therein set forth.

GEORGE A. BAKER,  
[SEAL.] Notary Public, N. Y. Co.

142 STATE OF NEW YORK, }  
County of New York, } ss:

Charles E. Phelps, being duly sworn, says: I reside at Bay Shore, L. I., in the State of New York, and am a freeholder therein. I am worth the sum of \$1,000.00 over and above all debts and liabilities and exclusive of property exempt from levy and sale under execution.

CHARLES E. PHELPS.

Sworn to before me this 4th day of June, 1894.

GEORGE A. BAKER,  
[SEAL.] Notary Public, N. Y. Co.

STATE OF NEW YORK, }  
County of New York, } ss:

Clarence Kenyon, being duly sworn, says: I reside at Brooklyn, in the State of New York, and am a householder therein. I am worth the sum of \$1,000.00 over and above all debts and liabilities and exclusive of property exempt from levy and sale under execution.

CLARENCE KENYON.

Sworn to before me this 4th day of June, 1894.

GEORGE A. BAKER,  
[SEAL.] Notary Public, N. Y. Co.

The within bond is hereby approved to operate as a supersedeas this 5th day of June, 1894, and writ of error allowed and citation issued.

HOYT H. WHEELER, Judge.

143 SIR: You will please take notice that the within is a copy of a supersedeas bond duly filed and entered herein in the clerk's office of U. S. circuit court, eastern district of N. Y., on the 6th day of June, 1894.

Dated New York, June 6th, 1894.

Yours, &c.,      LOGAN, CLARK & DEMOND,  
*Att'ys for Plff, 58 William St., New York.*

To Coudert Bros., att'ys for def't.

(Endorsed:) U. S. circuit court, eastern district N. Y. George F. Underhill, pl'tff, against Jose Manuel Hernandez, def't. Supersedeas bond. Logan, Clark & Demond, att'ys for pl'tff, 58 William street, New York. Filed June 6, 1894.

UNITED STATES OF AMERICA,      }  
*Eastern District of New York,*      }  
  } 88:

I, B. Lincoln Benedict, clerk of the United States circuit court for the eastern district of New York, do hereby certify that the foregoing record is a true copy of the pleadings, proofs and papers on appeal made up to be transmitted on appeal to the United States circuit court of appeals, for the second circuit, in the suit of George F. Underhill against Jose Manuel Hernandez.

In witness whereof I have hereunto set my hand and  
[SEAL.] the seal of this court this 5th day of July, 1894.

B. LINCOLN BENEDICT, Clerk.

144 UNITED STATES OF AMERICA, 88:

The President of the United States of America to the judges of the circuit court of the United States for the eastern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between George F. Underhill, plaintiff, and Jose Manuel Hernandez, defendant, a manifest error hath appeared to the great damage of the said George F. Underhill, plaintiff, as is said and appears by the complaint; we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States circuit court of appeals for the second circuit, at the city of New York, together with this writ, so that you have the same at the said place before the judges aforesaid on the 5th day of July, 1894, that the record

and proceedings aforesaid being inspected, the said judges of the United States circuit court of appeals for the second circuit may cause further to be done therein to correct that error what of right and according to the law and custom of the United States, ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the [SEAL.] Supreme Court of the United States, this 6th day of June, in the year of our Lord, one thousand eight hundred and ninety-four, and of the Independence of the United States, the one hundred and eighteenth.

B. LINCOLN BENEDICT,  
*Clerk of the Circuit Court of the United States  
 of America for the Eastern District of  
 New York, in the Second Circuit.*

The foregoing writ is hereby allowed.

HOYT H. WHEELER, *Judge.*

June 6th, 1894.

145 Circuit Court of the United States for the Eastern District of New York.

GEORGE F. UNDERHILL, Plaintiff and Plaintiff in Error,      }  
*against*      }  
 JOSE MANUEL HERNANDEZ, Defendant and Defendant in Error.      }

UNITED STATES OF AMERICA, *ss.*

To Jose Manuel Hernandez, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States circuit court of appeals for the second circuit, to be holden in the city of New York, on the 5th day of July, 1894, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of New York, wherein George F. Underhill is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated June 5th, 1894.

HOYT H. WHEELER, *Judge.*

146 At a stated term of the United States circuit court of appeals for the second circuit, held at the city of New York on Tuesday, the eighteenth day of December, A. D. 1894.

Present: The Honorables William J. Wallace, E. Henry Lacombe, Nathaniel Shipman, circuit judges.

GEORGE F. UNDERHILL, Plaintiff in Error,      }  
*vs.*      }  
 JOSE MANUEL HERNANDEZ, Defendant in Error.      }

This case coming on to be heard, Mr. Salter S. Clark is heard on behalf of the plaintiff in error.

Mr. F. R. Coudert is heard for the defendant in error.

WEDNESDAY, December 19, 1894.

147 This cause being still on hearing, Mr. F. R. Coudert continues his argument on behalf of the defendant in error. Mr. Salter S. Clark is heard in reply.  
*C. A. V.*

148 United States Circuit Court of Appeals, Second Circuit.

GEORGE F. UNDERHILL, Plaintiff in Error, }  
vs. }  
JOSE MANUEL HERNANDEZ, Defendant in Error. }

WALLACE, *Circuit Judge*:

This is a writ of error by the plaintiff in the court below to review a judgment for the defendant, entered upon the verdict of a jury pursuant to the direction of the trial judge. The suit was for false imprisonment and assault and battery of the plaintiff, committed by the defendant at the city of Bolivar, Venezuela. The acts complained of consisted in the detention of the plaintiff at his own residence in the city of Bolivar, under a guard of soldiers stationed near the house, from August 13th to October 18th, 1892, by the authority of the defendant, during which time the plaintiff was not permitted to leave the house without an escort of soldiers, and was several times refused a passport to leave the city, for which he made application to the defendant. During this period the defendant was in command of the city as a military officer. A revolution had been organized against the government of Venezuela, and an army had been mustered against the adherents of the recent president, whose term of office had expired, and who, it was claimed by the revolutionists, no longer represented the legitimate government. The principal parties to this conflict were those who recognized Palacio as their chief and those who followed the leadership of Crespo. The defendant belonged to the revolutionary party, and commanded its forces in the vicinity of Bolivar. Early in August an engagement took place between the forces of the two parties near Bolivar; the revolutionists prevailed, and August 13th the defendant entered Bolivar at the head of his forces and assumed command of the city. From that time until the plaintiff was permitted to leave Bolivar the defendant was the civil and military chief. Early in October the revolutionary party prevailed generally, and took possession of the capital of Venezuela; and on the 26th day of October, 1892, the Crespo government, so called, was formally recognized as the legitimate government of Venezuela by the Government of the United States, pursuant to instructions from the State Department to our minister, to recognize the new government, provided it was "accepted by the people, in the possession of the power of the nation, and fully established."

The plaintiff was a citizen of the United States who had constructed a water-works system for the city of Bolivar under a contract with the government, and was engaged in supplying the place

with water. He also carried on a machinery repair business. The evidence upon the trial indicated that the purpose of the defendant in his treatment of the plaintiff was to coerce the plaintiff to 150 operate his water works and his repair works for the benefit of the community and the revolutionary forces; it was not sufficient to have warranted a finding by the jury that the defendant was actuated by malice or any personal or private motive. The trial judge ruled, at the request of the defendant, that upon these facts the plaintiff was not entitled to recover, and directed a verdict for the defendant against the exceptions of the plaintiff.

The important question presented by the assignments of error arises upon the exception to the direction of a verdict for the defendant. This ruling proceeded upon the ground that because the acts of the defendant were those of a military commander, representing a *de facto* government in the prosecution of a war, he was not civilly responsible therefor.

Consideration of comity and of the highest expediency require that the conduct of States, whether in transactions with other States or with individuals, their own citizens or foreign citizens, should not be called in question by the legal tribunals of another jurisdiction. The citizens of a State have an adequate redress for any grievances at its hands by an appeal to the courts or the other departments of their own governments. Foreign citizens can rely upon the intervention of their respective governments to redress their wrongs, even by a resort, if necessary, to the arbitrament of war. It would be not only offensive and unnecessary, but it would imperil the amicable relations between governments, and vex the peace of nations, to permit the sovereign acts or political transactions of States to be subjected to the examination of the legal tribunals of other States. Influenced by these reasons, and because the acts of the official representative of the State are those of the State itself, when exercised within the scope of their delegated powers, courts and publicists have recognized the immunity of public agents from suits brought in foreign tribunals for acts done within 151 their own States in the exercise of the sovereignty thereof.

In *Moondalay v. Morton* (1 B. C. C. 469), the master of the rolls, while retaining jurisdiction of a suit which involved the private transactions of the East India Company, said: "They have rights as a sovereign power; they have also duties as individuals. If they enter into bond in India, the sums secured may be recovered here. I admit that no suit will lie in this court against a sovereign power for anything done in that capacity." In *Nabob of Arcot v. The East India Co.* (4 B. C. C. 180), the answer to a bill in equity alleged that all the transactions mentioned in the bill were of a political nature, and matters of State, and the court dismissed the suit upon that ground. In *The Duke of Brunswick v. The King of Hanover* (6 Beavan R., 1), the master of the rolls concluded an elaborate discussion of the liability of the defendant to a suit in chancery with the opinion that the King of Hanover, although a subject of Great Britain, was exempt from all liability to be sued in the courts of this country for any acts done by him as King of

Hanover. Upon an appeal from his judgment dismissing the cause to the House of Lords (2 H. L. Cas., 1), that tribunal decided that the defendant, notwithstanding he was a British subject, and was in England exercising his rights as such when sued, could not be made to account, in the court of chancery, for acts of state, whether right or wrong, done by him abroad in virtue of his authority as sovereign. The decision was put, not upon the personal immunity of the sovereign from suit, but upon the principle that no court in England could sit in judgment upon the act of a sovereign effected by virtue of his sovereign authority abroad. The Lord Chancellor said that "a foreign sovereign coming into this country cannot be made responsible here for an act done in his sovereign character in his own country;" that "the courts of this country cannot sit in judgment upon the act of a sovereign effected by virtue of his sovereign authority abroad; an act not done as a British

152 subject, but supposed to be done in the exercise of his authority, vested in him as sovereign." \* \* \*

In Hatch v. Baez (7 Hun., 596), the New York supreme court decided that an action could not be maintained in the courts of the State against the former president of the Dominican Republic for acts done by him in his official capacity, although he had ceased to be president when the suit was brought. The court said: "We think that by the universal comity of nations, and the established rules of international law, the courts of one country are bound to abstain from sitting in judgment on the acts of another government done within its own territory. \* \* \* To make him amenable to a foreign jurisdiction for such acts would be a direct assault upon the sovereignty and independence of his country. \* \* \* The fact that the defendant has ceased to be president of St. Domingo does not destroy his immunity. That springs from the capacity in which the acts were done and protects the individual who did them because they emanated from a foreign and friendly government."

The law officers of the United States have uniformly advised the executive department that individuals are not answerable in foreign tribunals for acts done in their own country in behalf of their government by virtue of their official authority.

In 1794, one Collet, lately the French governor of Guadaloupe, was arrested in this country in an action brought against him for the seizure and condemnation of a vessel. The matter having been brought to the attention of our Government, it was referred to the Attorney General, and he advised that the defendant, being subject to process, the Government could not then intervene, but added his opinion that if the seizure of the vessel were admitted to have been an official act done by the defendant by virtue or under color of the

153 powers vested in him as governor, it would of itself be a sufficient answer to the plaintiff's action, and that the defendant ought not to answer in our courts for any mere irregularity in the exercise of his powers, and that the extent of his authority could with propriety or convenience be determined only by the constituted authorities of his own nation." 1 Op. Att'y Gen., 45-46. In 1797, in the case of Sinclair, the Attorney General expressed the

opinion "that a person acting under a commission from the sovereign of a foreign State is not amenable for what he does, in pursuance of his commission, to any tribunal of the United States." 1 Op Att'y Gen., 81. In 1871 the Attorney General advised the Secretary of State as follows: "It has often been laid down that before a citizen of one country is entitled to the aid of his government, in obtaining redress for wrongs done him by another government, he must have sought redress in vain from the tribunals of the offending power. The object of this rule plainly is to give the offending government an opportunity of doing justice to the injured party in its own regular way, and thus avoid all occasion for international discussion." In 1872, in the case of the steamer *Tipitapa*, the Attorney General advised the Secretary of State in a case where an officer of a party of armed men, acting under an order of the judicial officer of the port of Granada, had seized an American vessel at that port, the seizure having been made for the purpose of enforcing a supposed legal right, "that the government ought not to make reclamation in behalf of the owner, as it is presumable that if the proceedings were illegal the judicial tribunals of Nicaragua would afford redress."

Conspicuous amongst the acts which are sheltered by this principle of international law are those of military officers in command of the armed forces of the State. According to one of the most recent commentators upon international law (Hall, section 102), officers in command of armed forces of the State, and their subordinates

154 or criminal laws of a foreign State, in respect to acts done in

their capacity as agents, for which they would be punishable or civilly responsible if done in their private capacity. This doctrine was sanctioned by our own Government in 1841, in the case of McLeod, who was under indictment for murder in a State court of New York. He had been engaged as a member of the colonial forces in repelling an attack made upon Canada by an armed force from the United States, and had assisted in the destruction of a vessel moored on the American shore of the Niagara river, during which an American citizen was killed. The British government, through its minister at Washington, demanded his release upon the ground that the destruction of the vessel was a public act, of persons in Her Majesty's service, obeying order of the superior authorities, and, therefore, according to the usages of nations, could only be the subject of discussion between the two governments. Mr. Webster, then Secretary of State, acceded to this view, stating that, "the Government of the United States entertains no doubt that, after the avowal of the transaction as a public transaction, authorized by the British authorities, the individuals concerned in it ought not, by the principles of public law and the general usage of civilized States, to be held personally responsible in the ordinary tribunals of law for their participation in it." The courts of New York refused to release McLeod at the intervention of the General Government, and he was tried, but acquitted on proof of an alibi. The episode led to the enactment, by Congress in 1842, of the provision,

now section 753, United States Revised Statutes, by which the courts of the United States are authorized to issue a writ of *habeas corpus*, "where a person, being a subject or citizen of a foreign State, and domiciled therein, is in custody for an act done or omitted, under any alleged right, title, authority, privilege, protection or exemption claimed under the commission, or order, or sanction 155 of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations."

Upon principle it cannot be important whether the acts of military authorities, when called in question, are done by the authority of a *de jure* or *titular*, or of a *de facto* government. In either case, if they are done in the legitimate exercise of belligerent powers, they are not ordinarily attended with civil responsibility. This principle has been recognized by the Supreme Court of the United States in cases in which the civil liability of Confederate soldiers, for acts done as members of the insurgent forces, during the rebellion, was under consideration. *Ford v. Surget* (97 U. S., 594); *Freeland v. Williams* (131 U. S., 405).

As was decided in *Williams v. Bruffy* (96 U. S., 176), the government of the Confederate States was a *de facto* government of an inferior class. "It never represented a nation; it never expelled the public authorities from the country; it never entered into any treaties, nor was it ever recognized as a government by an independent power."

*Ford v. Surget* was an action brought by the plaintiff to recover the value of certain cotton destroyed during the war of the rebellion in the State of Mississippi; and the court held that the defense that it was destroyed by the defendant, acting under the orders of the military authorities of the Confederate States, was a good justification. *Freeland v. Williams* was a bill in equity to invalidate a judgment of the court of the State of West Virginia obtained against the defendant for a tort committed by him as a soldier of the Confederate army. One of the questions discussed was whether the judgment was void, inasmuch as it proceeded upon the grounds that the defendant was civilly responsible as a trespasser for an act done by him as a Confederate soldier in accordance with the usages of civilized war. In the prevailing opinion the court said:

156 "The case as presented to us shows that the trespass for which the original judgment was rendered was of that character, and it is argued with much force that the court which rendered that judgment had no jurisdiction in the case, or, at all events, had no jurisdiction to render such a judgment, and that it is therefore void. It follows, from this view of the subject, that the court in which it was originally rendered had jurisdiction to set aside or annul it without the aid of the constitutional provision of the State of Virginia, and that on that ground alone the decree we are called upon to review must be affirmed. In this view of the subject some of the judges of this court concur." Again the court say: "If it be true that, when the original action was presented to the circuit court of Preston county, the thing complained of was found to be an act in accordance with the usages of civilized war, during the existence

of a war flagrant in that part of the country, that court should have proceeded no further, and its subsequent proceedings may be held to have been without authority of law. While it is not necessary to hold that the judgment, as presented by the record, is absolutely void, it may be conceded that a court of equity, in a proper case, can prevent the enforcement of it." In a dissenting opinion Mr. Justice Harlan insisted that the judgment was not void, but conceded that the complainant was not civilly responsible if his act was one of legitimate warfare as a soldier in the Confederate army.

The acts of the defendant as a military commander of the revolutionary forces in the civil war in Venezuela, although performed before the revolution became successful, are sheltered by the same immunities that would surround them if they had been performed subsequently. The organization of which he was a part, represented

157      that kind of a *de facto* government which is described in Williams v. Bruffy, "such as exists where a portion of the inhabitants of a country have separated themselves from the parent State and established an independent government. The validity of its acts, both against the parent State and its citizen or subjects, depends entirely upon its ultimate success. If it fail to establish itself permanently, all such acts perish with it. If it succeed, and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation." By its success the revolutionary party vindicated its claim to recognition as the legitimate government of Venezuela, and achieved a justification in the estimation of foreign governments and their legal tribunals for the acts of its military forces as complete and ample as though those forces had been employed by any sovereign power. After the recognition of the new government by the United States, the courts of this country must accord to those who, throughout the progress of the civil war, acted as the agents of the people of Venezuela, the position of official representatives of the State. The act of recognition by our Government neither added to, nor detracted from, the responsibility of the people of Venezuela for any prior injuries which citizens of the United States may have suffered on her soil from the hands of her *de facto* authorities; but these responsibilities, in our judgment, are to be adjudicated by the two governments by international action, according to the principles of international law applicable to such cases.

For these reasons we conclude that the acts of the defendant were the acts of the government of Venezuela, and as such are not properly the subject of adjudication in the courts of another government.

158      The various requests made to the court on behalf of the plaintiff for instructions to the jury, either involve propositions of law, which, according to the views we have expressed, were properly refused, or propositions for the submission of questions of fact, as to which there was no conflict of evidence, and which, therefore, the trial judge was not required to submit to the jury. If the trial judge, in directing a verdict for the defendant, enunciated a rule which, to its full extent, may not obtain, because

it implies that the defendant would not be civilly responsible, even in a court of Venezuela, for any act done by him as a military commander, his disposition of the case was nevertheless proper, and the result is not affected by his expression of an erroneous opinion.

The judgment is affirmed.

159 At a stated term of the United States circuit court of appeals for the second circuit, held in the court-room of said court, in post-office building, in the city of New York, on the 28th day of January, 1895.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

GEORGE F. UNDERHILL, Plaintiff in Error,      }  
 versus    }  
 JOSE MANUEL HERNANDEZ, Defendant in Error.      }

The defendant in error having applied to this court that a mandate issue to the circuit court of the United States for the eastern district of New York without delay, and it appearing to the court that this is a proper case for the immediate issuing of a mandate, on motion of F. R. Coudert, attorney for the defendant in error—

160 Ordered that a mandate issue out of this court to the circuit court of the United States for the eastern district of New York on the affirmance by this court of the judgment of said circuit court.

W. J. W.  
 E. H. L.  
 N. S.

161 UNITED STATES OF AMERICA,      }  
 Southern District of New York,      }

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 160, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George F. Underhill against Jose Manuel Hernandez, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 20th day of February, in the year of our Lord one thousand eight hundred and

ninety-five and of the Independence of the said United States the one hundred and nineteenth.

JAMES C. REED, Clerk.

162 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable  
the judges of the United States circuit court of appeals for the  
second circuit, Greeting:

Being informed that there is now pending before you a suit in  
which George F. Underhill is plaintiff in error and Jose Manuel  
Hernandez is defendant in error, which suit was removed into the  
said circuit court of appeals by virtue of a writ of error to the  
circuit court of the United States for the southern district of New  
York, and we, being willing, for certain reasons, that the said cause  
and the record and proceedings therein should be certified by the  
said circuit court of appeals and removed into the Supreme Court  
of the United States—

163 Do hereby command you that you send without delay to the  
said Supreme Court as aforesaid the record and proceedings in  
said cause, so that the said Supreme Court may act thereon as of  
right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the  
United States, the twentieth day of March, in the year of our Lord  
one thousand eight hundred and ninety-five.

JAMES H. MCKENNEY,

*Clerk of the Supreme Court of the United States.*

164 [Endorsed:] Supreme Court of the United States. No.  
926. October term, 1894. George F. Underhill *vs.* Jose  
Manuel Hernandez. Writ of certiorari.

UNITED STATES OF AMERICA, }  
Southern District of New York, *ss*:

I, James C. Reed, clerk of the United States circuit court of  
appeals for the second circuit, by virtue of the foregoing writ of  
certiorari and in obedience thereto, do hereby certify as a return to  
said writ the annexed copy of a stipulation (page 4), the original  
of which stipulation was filed in my office on the 21st day of  
March, A. D. 1895, and still remains on file and of record in said  
office, in the action entitled George F. Underhill, plaintiff in error,  
against Jose Manuel Hernandez, defendant in error.

In testimony whereof I have caused the  
Seal United States Circuit Court of Appeals, Second Circuit, seal of the said court to be hereunto affixed,  
at the city of New York, in the district  
above named, this 25th day of March, in  
the year of our Lord one thousand eight  
hundred and ninety-five, and of the Independence of the United  
States the one hundred and nineteenth.

JAMES C. REED, Clerk.

## 165 United States Circuit Court of Appeals for the Second Circuit.

GEORGE F. UNDERHILL, Plaintiff in Error, }  
vs.  
JOSE MANUEL HERNANDEZ, Defendant in Error. }

It is hereby stipulated and consented on the part of the above-named plaintiff in error and defendant in error that the certified copy of the record in this case, which was transmitted from the United States circuit court of appeals to the Supreme Court of the United States and filed with the petition of the plaintiff in error upon the motion for a certiorari, shall be taken with this stipulation as a full and complete return to the certiorari granted herein and dated the 20th day of March, 1895.

Dated New York, March 21st, 1895.

F. R. COUDERT,  
JOSEPH KLING,

*Counsel for Defendant in Error.*  
F. R. COUDERT, *Solicitor.*

SALTER S. CLARK,

*Counsel for Plaintiff in Error.*  
LOGAN, CLARK & DEMOND, *Solicitors.*

(Endorsed:) United States circuit court of appeals for the second circuit. George F. Underhill, plff in error, against Jose Manuel Hernandez, def't in error. Stipulation. Logan, Clark & Demond, att'ys for plff in error, 58 William street, New York. United States circuit court of appeals, second circuit. Filed Mar. 21, 1895. James C. Reed, clerk.

166 [Endorsed:] Case No. 15,810. Supreme Court U. S., October term, 1896. Term No., 238. Geo. F. Underhill, P. E., vs. Jose Manuel Hernandez. Writ of certiorari and return. Office Supreme Court U. S. Filed Mar. 27, 1895. James H. McKenney, clerk.